

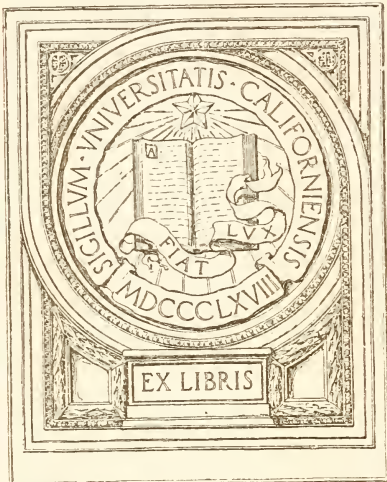
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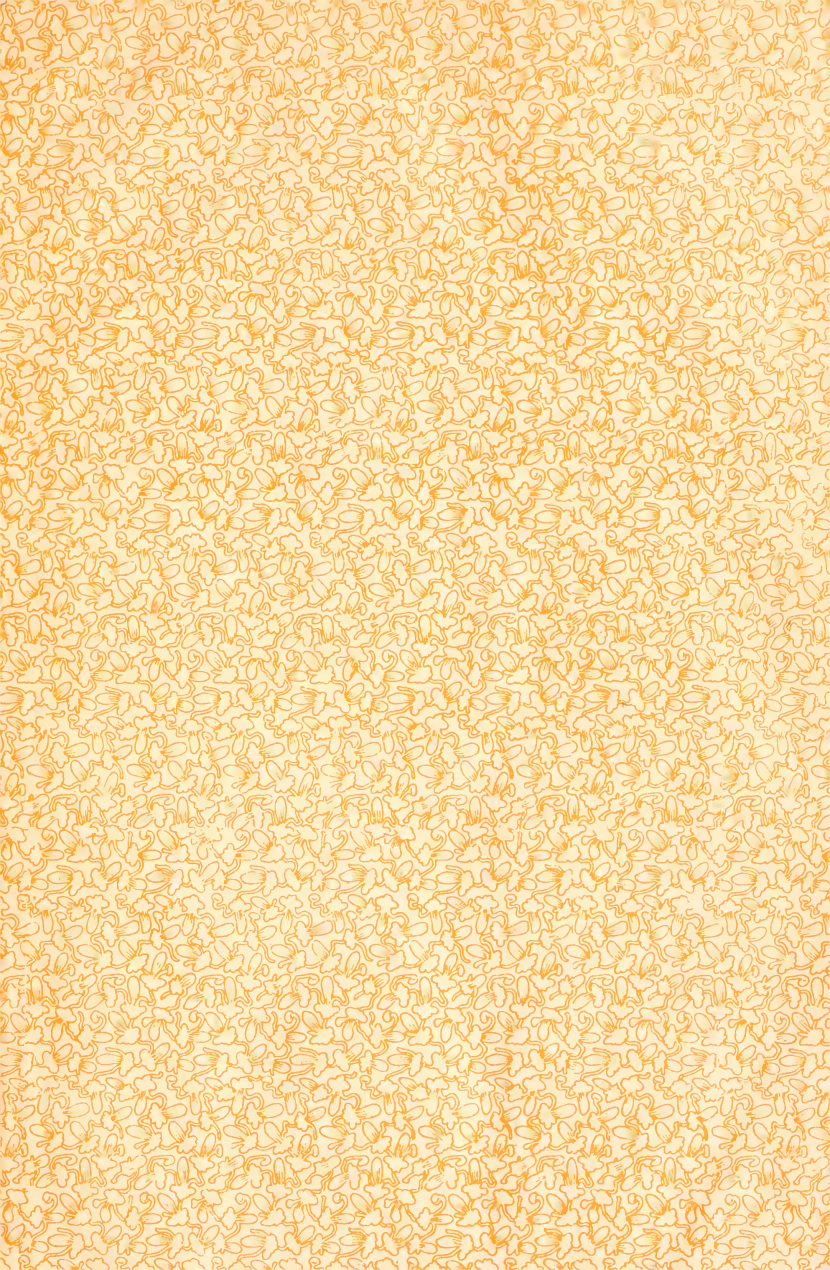
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SERIES IN
Political Economy and Public Law

No. 18

THE CONSULAR SERVICE
OF THE UNITED STATES

ITS HISTORY AND ACTIVITIES

BY

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Published for the University
PHILADELPHIA

1906

THE JOHN C. WINSTON CO., SELLING AGENTS
1006-16 Arch Street, Philadelphia, Pa.

TO
PROFESSOR EMORY R. JOHNSON
OF THE
UNIVERSITY OF PENNSYLVANIA.

INTRODUCTION.

Up to the middle of the last century the chief functions of consular services in Christian nations were the protection of citizens living or traveling abroad, and the superintendence of the maritime interests of the home countries. Within the last fifty years a development has taken place which has completely altered the comparative importance of the duties to be performed. Commercial nations have more and more encouraged their trade interests to look to the consuls for active aid in protecting and extending foreign commerce. The office of the consul has consequently assumed more of a public character than it formerly possessed, the *national* interests have come to occupy a larger share of official attention, and, with the development of greater public security, the protection of fellow-countrymen has become a less frequent, if not a less important duty.

The object of the present monograph is to sketch the history of the consular service of the United States and to point out especially the development of its relations to trade. It also aims to indicate the service actually rendered at the present time, the limits of the aid which consuls *can* lend to commerce, and the defects in our present consular organization. A study of the systems in use in the chief European commercial nations is also included to show what has been accomplished there in making the consuls a commercial body and the means adopted for that purpose.

For courtesies extended during the preparation of the monograph, I am especially indebted to the officials of the State Department at Washington, and to the directors of the Library of the Reichstag, Berlin. Acknowledgment should also be made of the facilities placed at my disposal by the Library of the University of Pennsylvania; Mr. H. A. Garfield, of Princeton, New Jersey; the Library of the University of Berlin, and

the Imperial German Library at Berlin; the British Museum, London; and the National Library and Library of St. Genevieve, Paris.

Acknowledgment is hereby made of the assistance received from the Carnegie Institution of Washington in the collection and preparation of materials for this monograph.

CHESTER LLOYD JONES.

MADRID, December 1st, 1905.

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The Consular Service

OF THE

United States and European Countries

CHAPTER I.

THE LEGISLATIVE HISTORY OF THE CONSULAR SERVICE.

The consular service of the United States did not arise in a formal enactment, but was an adaptation of a service which had grown up from the necessities of the American Revolution. Our representatives abroad during the early years of the war, partly appointed by Congress, partly by its committees, were subject to duties very diverse and comprehensive. Fiscal, diplomatic and consular functions were at first all included in the duties of our representatives at foreign courts, and the "commercial agents" who were sent to negotiate foreign loans served also as consuls.

At the close of the war, fiscal agents were no longer needed, but they were continued in their consular functions, and the ministers who succeeded our commissioners at the court of France also continued their three-fold duty.¹

The first appointment of men who came to exercise duties of a consular character was made in January, 1776, by the Congressional Committee of Commerce. By this committee were appointed Silas Deane and F. T. Morris, a brother of Robert Morris, to go to France to purchase supplies. At first these men had no consular functions, but later came to exercise them especially in the protection of American seamen. In September of the same year a board of three commissioners

¹For a study of the period before 1792, see an article by Emory R. Johnson, in the *Political Science Quarterly*, Vol. XIII, 1898. ✓

was appointed to negotiate treaties of commerce and alliance with France, and these men, in conjunction with the commercial agents, who continued to purchase supplies also, acted as consuls for the colonies. This method of assigning functions of various sorts jointly to a number of men, proved inefficient, and in 1778 we find it urged that the business of the United States should be placed in the hands of a single set of responsible officers. The commissioners at Paris, also finding that the supervision of the commercial agents with which they were charged, interfered with their other duties, requested that consuls be appointed.

The right to consular representation was granted in the treaty of commerce with France, signed on February 6, 1778, though the special agreement defining the functions and powers of these officers was not concluded until ten years later. Unlike the government of France, Congress did not follow up this treaty with the prompt appointment of consuls, and it was not until 1780 that our first formally designated consul was chosen. Congress then chose "William Palfrey, consul, to reside in France at a salary of fifteen hundred dollars in lieu of all commissions for business done on account of the United States." Palfrey was to have general supervision of all the fiscal affairs of the United States in France, and "powers adequate to a general agency in our commercial concerns there,"² and was thus a consul-general in power. However, he never reached his post as his ship was lost in a storm. Doubtful of his fate, Congress sent Thomas Barclay, first as vice-consul, later as consul, to fulfill the duties of the office. It is worthy of notice that both these appointments were to salaried positions. Little attention was given the consular service from this time to the end of the war. Congress in 1781 and 1782 created and extended the powers of the "Secretary of Foreign Affairs," but still remained the chief source of authority for the foreign service.

With the close of the war and the revival of our foreign

² MS. Archives Dept. of State, quoted G. Hunt, *Hist. of Dept. of State*, 1893, p. 14.

trade, however, the question of our foreign representation was forced upon the attention of the government. Commercial treaties were concluded which guaranteed the right to consuls,³ continental merchants began to seek our trade and our ministers abroad were besieged by numberless applications by these merchants for appointments to consulates.

The service was generally offered free as the applicant counted upon the prestige accompanying the office for his reward.

The question now arose as to whether foreigners should be allowed to hold these posts. John Jay wrote from Paris, "In my opinion Americans only should be employed to serve America." Congress also shared this opinion and in 1784 resolved, "It is inconsistent with the interests of the United States to appoint any person not a citizen thereof—a consul, vice-consul or to any civil department in a foreign country."

Not till 1785 did Congress try to outline the organization of our consular service. On August 9 of that year, the Secretary of Foreign Affairs was asked to "report the number of consuls and vice-consuls necessary to be appointed and the ports in which they should reside." This beginning bore no fruit, as on October 28, against the advice of our foreign ministers, Congress united the diplomatic and consular services by conferring the powers of Consul-General upon our ministers plenipotentiary and where there were no ministers, on Charges d'Affairs. This policy was not, however, strictly adhered to and three months later (January 26, 1786) the method of appointing a distinctly consular officer was resorted to in the choice of a consul and vice-consul for Canton, China.

It was in this condition, with no settled legal basis or policy of appointment, that our consular service was at the time of the adoption of the constitution. The incoming administration adopted the service as found, although its defects were plain. In the November following the ratification of the constitution, the special convention as to consuls, provided for in our treaty

³Holland 1782, Sweden 1783, Prussia 1785. See E. R. Johnson's article.

with France of ten years before, was concluded,⁴ and adopted by the Senate July 26, 1789. The convention as a whole was considered at this time a model instrument and was praised by foreign authorities as "the most complete consular convention ever concluded and likely to be taken as a precedent for the future."⁵ Congress had tacitly accepted the then existing consular service on the first of the preceding July.

During the first three years of his presidency, Washington appointed seventeen consuls and five vice-consuls. Their remuneration was derived from business and fees. Many of the weaknesses of the organization were apparent from the first and further legislation was recommended by Washington as early as 1790.⁶

The first act, and for over half a century the only one of fundamental importance in regard to the organization of the consular service, was passed on April 14, 1792.⁷ In this law "for carrying into full effect the convention between the king of the French and the United States of America," the consular service is formally established and the duties and privileges of the officers are, for the first time, defined.

The relative importance of the duties assigned to the consuls by this act is very different from the present. Certification to invoices of exports declared for the United States and making reports of a commercial character are not among the consul's duties at all. His rights and obligations may be summarized as follows:⁸

To receive protests of captains, masters, crews, passengers, merchants, or of any foreigner, or of any citizen of the United States, relative to the interest of any citizen of the United States.

⁴ November 14, 1788.

⁵ Quoted by Secretary Seward in a letter to the Senate Finance Committee, March 16, 1864. (H. Mis. Doc., 38th Congress, Ses. I, Vol. III, Doc. 77.)

⁶ President's Message, December 8, 1790.

⁷ Senate Committee ordered to report such a bill on November, 1, 1791. *Annals of Congress.*

⁸ Second Congress, Ses. I, Ch. 24, April 14, 1792.

To authenticate copies.

To take charge of the estates of United States citizens dying abroad without legal representative.

To take care of stranded vessels.

To receive fees for :

Authenticating under seal, protests, declarations, depositions and the like—\$2.00.

Administering estates as above—5 per cent.

To succor American seamen in distress at the expense of the United States not to exceed 12 cents per diem.

To require American masters to carry such seaman home free of charge, with the provision that the seaman shall work during the passage. If masters shall refuse—to fine them \$30 for every seaman so refused.

To require master if ship is sold in port to provide means for the return of the seamen (unless released by contract) the amount to be determined by the consul.

By the same act, consuls are required to give bond for the faithful performance of duty (a provision which has not, however, guaranteed responsibility)⁹ and the President is authorized to give salaries to the three consuls in the Barbary States.

The duties of the consuls are thus by this act almost wholly the protection of the interests of American citizens, especially seamen, as individuals; and have no connection with the extension of American commerce in general or with the protection of the customs of the government from fraud—functions which have lately become of great importance.

All the consuls were dependent upon business and fees for payment, with the exception of the three in Tunis, Tripoli, and Morocco, for whom "as no one would accept the position otherwise," a salary of \$3000 each was authorized, following the recommendation of President Washington in his message of March 2, 1795.¹⁰ To this list of salaried consulates there

⁹ See Report, House Documents, 42d Con., Ses. III, Doc. 168, January 3, 1873.

¹⁰ House Journal, March 2, 1795.

was added in 1797 Algiers, at a salary of \$4000 (reduced in 1810 to \$3000). These four remained with a few exceptions¹¹ the only salaried consulates for over fifty years.

The general provisions outlined in this law of 1792 remained practically without change the basis of the organization until the legislation of 1855-6. The modifications introduced in the period were chiefly in extension or alteration of the duties in relation to seamen.

The first of these supplementary acts was passed in 1803.¹² Abuse had arisen through the discharge, in foreign ports, by ship masters, of seamen who for various reasons were not needed on the return voyage or had become unwelcome to the master in any other way. Under the new law the master before sailing was required to deposit a bond of \$400 that he would return to the United States all his crew shipped with the exception only of those dying abroad, absconded, impressed into foreign service, or discharged with the consent of the consul. Consuls were to grant discharge when requested to by both parties or by the master alone, provided always that in either case three months advance wages be paid to the consul for each seaman so discharged; two-thirds of which amount was to be paid the seaman on his engagement to return to the United States, one-third to be turned into the treasury to be used as a relief fund for destitute mariners. Other provisions of the law altered the act of 1792 as follows:

Masters were to be allowed not to exceed \$10 per man for each seaman returned, which amount consuls were authorized to pay them; it being still the law that the seaman was to work in addition. The fine for refusal to transport was raised from \$30 to \$100, to be sued for by the consul. This law was still a hardship for the shipmasters, especially in cases where the sailors had to be brought from a great distance. It was not

¹¹ Exceptions are allowance for salary \$2000 to consul at Paris and \$2000 salary with \$2800 for stationary, office rent, and clerk hire to consul at London. Acts of U. S., July 19, 1836, March 3, 1837, August 26, 1842.

¹² Statutes at Large, 7th Con., Ses. II, Ch. 9, February 28, 1803.

changed, however, although a resolution of the Senate in 1812 declared in favor of an increased allowance.¹³

It was also provided that ships' papers should be delivered to the consul while the ship remained in port, thus assuring greater responsibility to the local authorities and preventing the forgery of sea letters which had become a common practice.¹⁴ Certain additional official fees were stated and consuls were allowed two per cent. for taking the wages of seamen discharged. The Secretary of State was authorized to reimburse consuls for aid given seamen even if such aid exceeded twelve cents per diem. Penalties were established for the abuse of power by consuls.

The first formal interdiction of trade to any of our consuls occurs in the act of 1810 which provided that the consuls in the Barbary States should have a salary of \$3000 each to cover all claims against the United States and that they should not be engaged in trade. The same law provided that "no consul shall be allowed an outfit in any case whatsoever, any usage or custom to the contrary notwithstanding."¹⁵

The following year the payment for the return of seamen was extended to such as were brought from ports where there was no consul, the Comptroller of the Treasury being authorized to grant such compensation in addition to that allowed by law "as shall be deemed equitable."¹⁶

The foregoing statutes show that the chief function of the consular service in the eyes of the legislators of the time was the protection of those engaged in American commerce upon the seas.

In 1818 a new branch was given to the work. The United

¹³ Annals of Congress, June 1, 1812.

¹⁴ Dept. of State Arch., Wash. in a letter by Secty. James Madison, 1801, in "Papers Relating to Consular System and Circulars" (MS.).

¹⁵ Statutes at Large, 11th Con., Ses. II, Ch. 44, May 1, 1810. "Notwithstanding this prohibition, consuls in Barbary were allowed a quarter's salary on return at expiration of service" by the uniform practice of the government. Sen. Rep., 31st Con., Ses. I, Doc. 26, January 29, 1850.

¹⁶ Statutes at Large, 11th Con., Ses. III, Ch. 28, February 28, 1811.

States was the first important country to make the consular system of value to the customs house authorities. The idea was first fixed in law as early as 1799,¹⁷ when in case of goods exported from the United States after being imported, and upon which a drawback is claimed for duties paid, a bond was to be given, dischargeable upon the production of a certificate from the consignee in the foreign port that they have been received and also a certificate "under the hand and seal of the consul or agent of the United States residing at the said place declaring either that the facts stated in the certificate of such consignee are to his knowledge true, or that such certificate is deserving of full faith and credit."

This expedient of requiring invoices to be certified by consuls was in the revenue act of 1818 extended to all goods subject to advalorem duty declared for the United States in foreign ports.¹⁸

The importer of goods dutiable advalorem was required "to make oath as to their value before the consul of the United States in the country of the port of export or before a notary public whose character shall be certified by a consul of a friendly nation in case the United States has no consul at that port." This provision was extended in 1823 to¹⁹ apply to all points, the certification in case there was no foreign consul resident to be made by "two respectable merchants if such there be in the port."¹⁹ Even so, however, many goods were shipped without invoicing, as goods²⁰ were not sent back if not valued.²¹ Later, by order of the Secretary of the Treasury, invoices were to be required on all imports and severe penalties were added for collusion by consuls in the undervaluation of goods.²²

The question of the protection of American seamen in for-

¹⁷ Statutes at Large, 5th Con., Ses. III, Ch. 22, Sec. 81, 1799.

¹⁸ Statutes at Large, 15th Con., Ses. I, Ch. 79, April 20, 1818.

¹⁹ Statutes at Large, 17th Con., Ses. II, Ch. 21, 1823.

²⁰ Dept. circular, May 24, 1834. Papers relating to Consular System and Circular (MS.).

²¹ Leniency on this point was continued up to as late as 1851.

²² Statutes at Large, 23d Con., Ses. II, Ch. 33, March 3, 1835.

ign ports was not settled by the act of 1803,²³ but the dissatisfaction, though it produced agitation in Congress in 1817 and 1831 especially, produced no result until 1840.²⁴ First a law was passed to extend the provisions of the law of 1803 to whaling vessels as well as those engaged in foreign trade.²⁵ Later in the same year, a law amending some of the provisions of the law of 1803 was passed.²⁶ Under the old law great carelessness had been usual in the making up of the ship's lists. The descriptions of the men were vague and the crew list was often sworn to by the masters with no knowledge as to its correctness under the plea that it was "impracticable to comply with the law."²⁷ The new law provided that the list should describe the crew clearly and that it should be delivered to the consul on demand. It had long been complained²⁸ that great cruelty was often practiced by the masters in the treatment of the seamen. Knowing that if he discharged the seaman he would be liable to the penalty of three months' wages, the master resorted to maltreatment to induce the sailor to desert, or he was taken ashore, made drunk, and when he did not appear at the end of his leave of absence, was held to have deserted. In other cases sailors were discharged openly in defiance of the law.²⁹

To try to stop this abuse the new law provided that the consul might remit the payment of the extra three months' wages upon application of both master and seaman, if it appeared expedient. This arrangement, it was hoped, would

²³ See letter from Consul Daniel Strobel (Bordeaux), as to false crew lists and violation of seamen's rights. Papers Relating to Consular System and Circulars (MS.). January, 1825.

²⁴ See American State Papers, January 25, 1817, Doc. 3, Senate Doc., 21st Con., Ses. II, Doc. 57, Vol. II, 1831.

²⁵ Statutes at Large, 26th Con., Ses. I, Ch. 6, April 4, 1840.

²⁶ Statutes at Large, 26th Con., Ses. I, Ch. 48, July 20, 1840.

²⁷ Senate Doc., 21st Con., Ses. II, Vol. II, Doc. 57, Exhibit C, 1830, 1831.

²⁸ For description of the abuses: Amer. State Papers, Doc. 27, January 25, 1817.

²⁹ Senate Doc., 21st Con., Ses. II, Vol. II, Doc. 57, Exhibit C, 1830, 1831.

allow the discharge of the dissatisfied without recourse by the master to ill treatment. In this it failed of its object, as the ill-treated sailor might be willing to forego the extra wages to be freed from the tyranny of the master.

This modification of the law in the consular service was, with two negligible exceptions,³⁰ the last move of the legislative machinery on this subject before the recasting of the service in 1855-6.

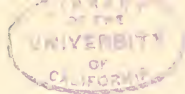
The period was not, however, one of inaction. The weaknesses of the organization were evident and a movement for reform was in course which achieved but part of its objects in the reorganization.

The chief defects in the eyes of the advocates of reform was the fee system. Attention was given to this subject as early as 1830,³¹ when Secretary VanBuren instituted an inquiry through the consuls as to the efficiency of this method of payment. It was shown that the income of the consuls was inadequate, making necessary the charge of irregular and exorbitant fees which were a constant source of "bickering and dispute." The inadequate remuneration,³² moreover, made it impossible for the consul to maintain his due social standing and influence in the community. To change this condition, a salaried service with a prohibition of other business connections was recommended. If this proved impracticable, charges were to be made certain as far as possible and accurate returns of the amounts of the receipts were to be made to the govern-

³⁰ Statutes at Large, 28th Con., Ses. II, Ch. XVII, February 20, 1845. "Commanding officer of vessel or fleet on the high seas or in foreign ports where there is no United States consul . . . has all the powers of a consul as regards mariners." Statutes at Large, 28th Con., Ses. II, Ch. 69, March 3, 1845. Foreign consuls to pay postage due on letters destined for the United States held in foreign ports.

³¹ Senate Doc., 21st Con., Ses. II, Vol. II, Doc. 57, 1830-31. The substance of this report was also stated in a letter from Consul J. M. McPherson, Carthegena, Columbia, to the Secretary of State, December 14, 1829. Papers relating to Consular System and Circulars Washington (MS.).

³² See reply to Dept. Circular of June 9, 1830, as to inadequacy of fees. Papers Relating to Consular System and Circulars Washington (MS.).



ment, which had never yet been done, and ships were to pay fees on tonnage instead of the same set fee for each.

This attempt was followed the next year by a similar effort with similar results. In his report to President Jackson, Secretary of State Livingston says as to fees:³³

"I have no hesitation in giving a decided opinion that the exaction of fees has been . . . injurious to the reputation of our country . . . degrading to the officer who is obliged to wrangle for them . . . oppressive to our commerce and ought to be wholly abolished, or modified as to make . . . the system . . . equal . . . These officers should be compensated by adequate salaries and should be prevented from engaging in commerce."

The Secretary then discusses the general condition of the service. The lack of definite rules defining the rights and privileges of the consuls is deplored as "usages differing in different ports . . . and (the) few meagre laws" on the subject make the powers uncertain to honest consuls, and open to abuse by the dishonest. Consuls should be salaried and all trade interdicted because trading consuls can profit from a knowledge of their rivals' business secrets.

This able report has formed the basis of practically all official discussions on the evils of the fee system since the time it was published. Again, in 1838³⁴ and 1844³⁵ plans for reform were submitted but to no result. In the former case the initiative came from within the service itself. In 1846 a Select Committee of the house reported "that they find the consular system . . . very imperfect . . . and by no means adequate to the present commerce of the United States." The main lines of Livingston's recommendations were renewed and the importance of the consuls being American citizens was emphasized. Here, too, we find the first stress placed upon the need of familiarity with the language and customs of their respective

³³ Senate Doc., 22d Con., Ses. II, Doc. 83, March 2, 1833.

³⁴ Senate Doc., 25th Con., Ses. II, Vol. II, Doc. 467, May 2, 1838. G. W. Montgomery, Consul to Porto Rico presents a plan. Secretary of State Forsyth's opinion adverse to the plan as presented.

³⁵ House Reports, 28th Con., Ses. I, Doc. 166, February 15, 1844.

countries and the consequent necessity that the officers should "be to some extent permanent."³⁶ A bill was prepared in the House and reviewed at length by Secretary of State James Buchanan.³⁷ Though but a partial measure, it contained the chief provisions which have since been adopted and further showed the need of a "consular code" to define rights and duties, as at that time "detached and conflicting" laws were the only guide to consular action. A special set of rules was also recommended for the regulation of the judicial powers of consulates exercising the rights of extraterritoriality. Other portions of the legislation in force were proving a disappointment. The law regarding the certification of invoices was subject to frequent evasion and the law of 1840 to protect seamen was found to result in no benefit to them, while it opened the door to a host of claims on the part of dishonest consuls for reimbursement on account of money claimed to have been spent in relieving destitute American sailors.

This bill, though it had a show of strength, went the way of its predecessors. Not till eight years later was the subject again seriously considered. Then in 1854³⁸ a bill aimed chiefly at the fee system was favorably reported by the House Committee on Foreign Affairs, and the next year was at last enacted into law.^{38a} At once numerous questions were raised as to the constitutionality of the measure. The enacting clause was mandatory in statement, the rank of the various diplomatic officers was stated in the bill for the various posts, the President was authorized to appoint to a *new* set of offices in the recess of the Senate and in addition some of the provisions were "inexecutable."

The questions of interpretation were submitted to Attorney-General Caleb Cushing by Secretary Marcy and his opinion was rendered in exhaustive reports on May 25 and June 2,³⁹ 1855. The mandatory provisions were construed permissively and the discretion of the President in appointment to the dif-

³⁶ House Report, 29th Con., Ses. I, Vol. IV, Doc. 714, June 17, 1846.

³⁷ House Doc., 29 Con., Ses. II, December 15, 1846.

³⁸ House Report, 33d Con., Ses. I, Vol. 3, Doc. 348, August 1, 1854.

^{38a} Statutes at Large, 33d Con., Ses. II, Ch. 175, 1855.

³⁹ Opinions of the Attorney-General, Vol. VII.

ferent *ranks* in the diplomatic service was held to be beyond modification by the Congress. Other sections of the opinion vigorously reviewed the law and recommended changes.⁴⁰

The next year a law with similar objects but which obviated the constitutional difficulties and adopted some of the suggestions of the Attorney-General was passed.⁴¹ This law of 1856, the basis of our consular system at the present time, was called a reorganization of the service. The reorganization was confined to the subject of salaries and even here extended only to the higher classes in the offices. The rest of the law was occupied in the clearer definition of the rights and powers of the officers.

As regards payment, the most important posts were divided into two classes known as schedules B and C. The consuls in the first class were to receive a salary in lieu of all commissions, fees and other official sources of income, and were not to be allowed to engage in business. This was a regulation which had been recommended repeatedly by Secretaries of State for the whole service.⁴² The officers in schedule C had the same regulations upon salary, but were to be allowed to trade. All consuls not enumerated in the above classes were to be paid as before—by the fees collected at their respective consulates. Advance was made in collecting the general regulations of the service into a single law and developing some measure of accountability.

The law of 1840 in regard to the discharge of American seamen in foreign ports had long been a source of complaint; it had not protected the sailors and was a constant drain on the treasury. Hereafter no consul was to allow the discharge of a seaman with remission of wages unless convinced that it was for such mariner's interest and under such conditions as would secure the United States from having to support him.

With the grant of salaries, the allowances customary for

⁴⁰ The most important being the establishment of the grade of consular pupils.

⁴¹ Statutes at Large, 34th Con., Ses. I, Ch. 127, August 18, 1856.

⁴² Livingston, Sen. Doc., 22d Con., Ses. II, Vol. I, Doc. 83, March 2, 1833. VanBuren, Sen. Doc., 21st Con., Ses. II, Vol. I, Doc. 57, 1831. Forsyth, Sen. Doc., 25th Con., Ses. II., Vol. II, 467, May 2, 1838.

various expenses were rigidly cut off. The *salary* was to be the total compensation from the government with the exception of an allowance to non-trading consuls of an amount equal to ten per cent. of their respective salaries for office rent. In addition, stationery, blank books, flags and similar articles were furnished by the United States government. ✓

The law also defined with more exactness than before the consul's obligations as to records, reports, absences, and miscellaneous other duties. As a measure intended to be the beginning of a permanent consular service to be formed of men who had grown up in the work, the appointment of twenty-five young men as "consular pupils" was authorized, who after examination for fitness were to receive appointments to subordinate positions in such consulates as the President should designate. They were not to be removable except for good cause.

The modifications in the laws relating to the consular service since 1856 have been in matters of detail, some treating of the particulars of routine work, others prompted by efforts to adapt the insufficient system to our growing commercial needs.

The abolition of clerk hire in the law of 1856 had been partially justified by the intention of the Congress to have the work done by the newly established "consular pupils" who were thus to acquire their training for the promotion in rank which they were to receive. However, both the clerical aid they were to furnish and the plan for a trained service were cut off "notwithstanding an urgent appeal for retention . . . by Secretary Marcy,"⁴³ by a law passed the next year⁴⁴ (1857) repealing the provision establishing the corps. This action seriously hampered the work of many consulates, as the consul could with difficulty support himself from his salary and also pay for the necessary clerk hire. The substitution of fixed salaries for fees was also complained of from many consulates and many who were allowed the privilege of trading wrote to the government that the concession was valueless to them.⁴⁵

⁴³ See House Misc. Doc., 38th Con., Ses. I, Vol. 3, Doc. 77, April 20, 1864, in Seward's report.

⁴⁴ Statutes at Large, 34th Con., Ses. III, Ch. 38, February 7, 1857.

⁴⁵ House Ex. Doc., 35th Con., Ses. II, Vol. VII, Doc. 67, January 25, 1858.

That the complaints were at least partly justified⁴⁶ was recognized by the State Department, and efforts were made by the Secretaries for the reestablishment of the corps of consular pupils. Secretary Marcy in 1857,⁴⁷ Cass in 1858,⁴⁸ and Seward in 1862,⁴⁹ and again in 1864,⁵⁰ recommended legislation on the subject. In the latter year Congress finally authorized the appointments again, the number being reduced to thirteen.⁵¹

The status of these officers has remained unchanged from that time to this. They still receive the salary of \$1000 upon appointment, with an increase to \$1200 as provided by a law of 1874⁵² after five years' service. In its original object the plan of securing trained men thus for promotion to higher positions has failed altogether. The appointees have declined promotion, preferring a small salary on a secure basis to a better one subject to the dangers of political influence at home. As pointed out by Inspector Keim in 1872, the system, as it now exists, is valueless.⁵³

Besides the limited, indirect increase in consular salaries provided for in the appointment of "consular clerks" (pupils), there are two other ways in which the endeavor has been made to have the pay bear some relation to the importance of the post. These are in the allowances for office rent and clerk hire. The original provision in 1856 was that consuls not

⁴⁶ See House Ex. Doc., 35th Con., Ses. II, Vol. VII, Doc. 68, January 25, 1858. See also as to amount of fees formerly received, ranging down from nearly \$10,000 in several cases, the list in J. Sidney Henshaw's Manual for U. S. Consuls, 1849. Library of Dept. of State, Washington.

⁴⁷ January 3, 1857. See House Ex. Doc., 35th Con., Ses. II, Vol. VII, Doc. 68, January 25, 1858.

⁴⁸ House Ex. Doc., 35th Con., Ses. II, Vol. VII, Doc. 67, January 25, 1858.

⁴⁹ House Misc. Doc., 38th Con., Ses. I, Vol. III, Doc. 77, April 28, 1864.

⁵⁰ Senate Ex. Doc. 37th Con., Ses. III, Vol. I, Doc. 14, December 24, 1862.

⁵¹ 38th Con., Ses. I, Ch. 136, June 20, 1864. Statutes at Large.

⁵² 43d Con., Ses. I, Ch. 275, June 11, 1874. Statutes at Large.

⁵³ House Doc., 42d Con., Ses. III, Doc. 145, December 12, 1872. See Forum, February, 97, p. 673. Article by W. W. Rockhill. Of the 64 clerks appointed 1864-1896 only 8 were promoted to consulships.

allowed to trade should be granted an amount not to exceed ten per cent. of their salary for office rent. This provision proved entirely inadequate. Inspector Keim, in his report to the President in 1872, asserted that as a result of this meagre allowance he found many "consulates in second-rate back rooms, often in garrets."⁵⁴ To increase the allowance for office rent was, he held, imperative.

Special acts had already in certain cases increased the allowance for this item,^{54a} and Congress, following the above recommendation which was also supported by Secretary of State Fish,⁵⁵ raised the general office rent allowance for non-trading consuls to twenty per cent. of the salary.⁵⁶

This is still the law, although in many places the appropriations are admittedly inadequate to secure suitable official quarters.⁵⁷ Trading consuls are given no allowance for rent, but the offices must be "devoted exclusively to the consular business."⁵⁸

No stated appropriations for clerk hire were made from 1856 to 1874.⁵⁹ In the latter year, however, with the general review of consular salaries then made, thirty of the principal consulates were also given clerks.⁶⁰ The amounts given the various posts for this purpose varied from \$3000 in the case of Havana and Liverpool to \$1500 in twenty-five of the less important posts. It was also provided that vice-consuls might

⁵⁴ House Doc., 42d Con., Ses. III, Doc. 145, December 12, 1872.

^{54a} Statutes at Large, 40th Con., Ses. III, Ch. 125, March 3, 1869.

⁵⁵ House Misc. Doc., 42d Con., Ses. III, Vol. II, Doc. 61, March 25, 1872.

⁵⁶ Statutes at Large, 42d Con., Ses. III, Ch. 184, February 22, 1873.

⁵⁷ See Report of Inspector Peirce, 1904.

⁵⁸ Consular Regulations, 1896, p. 25.

⁵⁹ An exception is Paris, in 1869, Statutes at Large, 40th Con., Ses. III, Ch. 125, March 3, 1869. See also recommendations of Secretary of State, House Misc. Doc., 41st Con., Ses. II, Doc. 29, January 17, 1870. See opinions of the State Dept. on inadequacy of clerk hire, House Ex. Doc., 35th Con., Ses. II, Doc. 68, pp. 3, 5, 13, 15, 18, 20, 21, 55-62. House Ex. Doc., 35th Con., Ses. II, Doc. 46, pp. 1-9. House Rep., 36th Con., Ses. I, Doc. 564, p. 2.

⁶⁰ Statutes at Large, 43d Con., Ses. I, Ch. 275, June 11, 1874.

receive compensation even though not citizens of the United States, as in some cases it was practically impossible to get American citizens for the office as required by the law of 1856. The policy of the department continued to be, as it was even before the law of 1856, to employ when possible only Americans in these offices.⁶¹ The appropriations for clerk hire have gradually increased from year to year and besides the stated allowance, a fund for clerkships not named in law has been created⁶² to be spent under the direction of the Secretary of State. In 1881⁶³ the allowance reached to fifty consulates, in amounts from \$2500 to \$600 each, and in 1896 to eighty-four consuls, besides the general fund amounting to \$30,000.

Besides these indirect ways of increasing salaries, in almost every year since 1856 some changes by direct act have been made in the salaries assigned to various posts. These changes are made generally in the appropriation for the diplomatic and consular service, sometimes in deficiency bills, sometimes in special acts. The alterations are often on lines suggested from the State Department, though instances of the manipulation of the law by other influences have not been unknown.⁶⁴ At best, however, the changes have been made by following no well defined or consistent policy, and have often neglected to conform to the very evident changes in commercial importance and the increasing demand of trade. The income at a few posts like London and Paris has come to be enormous when the item of unofficial fees is considered in addition to the salary; in other instances, and often in undesirable and *unhealthy* places, the total income is represented by a salary of \$1500. In other positions, where the collection of fees and the protection of the interests of American citizens take much of the consul's time, the compensation is far below that of the

⁶¹ Dept. Circular, June 1, 1853. The employment of foreign clerks is "no longer to be countenanced." If a United States citizen cannot be secured the fact should be reported to the Department.

⁶² See Statutes at Large, 47th Con., Ses. I, Ch. 262, July 1, 1882.

⁶³ Statutes at Large, 46th Con., Ses. III, Ch. 78, February 24, 1881.

⁶⁴ See Keim's report on certain consulates in England. See also arguments on Lodge bill, referred to below.

representatives of other countries and what is necessary to support the office creditably. For example, "the consul at Montevideo has a salary of \$3000 with official fees of \$922, showing the amount of business done at his office, while the consul at Stettin, Germany, has a salary of \$1500 with fees of \$1192, showing a much larger business. So also at Demarara, British Guiana, the consul has a salary of \$3000, though the official fees amount to only \$637, while at Leipsic, with official fees of \$5118, the salary amounts to only \$2000. The consul at Nuremberg, Germany, a city of 160,000 inhabitants, has a salary of \$3000, while the consul at Munich, the capital of Bavaria, with 450,000 inhabitants, has a salary of only \$2000. The recital of these facts assuredly shows the need of revision—and they could be amplified from every portion of the globe.⁶⁵

That much has been done, however, to conform the service to the demands made upon it, is seen by the following facts:⁶⁶ In the years 1856-1901 there were added in schedule B two hundred and twenty consulates, either by promotion from the lower classes of consuls or by the establishment of altogether new posts. In one hundred and forty-nine cases salaries were increased with the growing importance of the post; for an opposite reason we find forty-three cases of a decrease of salary and eighty cases of the abolition of posts no longer deemed useful. In twenty-one cases posts once dropped have been reestablished.^{66a}

The number of offices in schedule C—trading—salaried consuls has been much decreased. In 1856 there were forty-one posts in this class, but from 1870-1895 they numbered generally less than half a dozen. In 1901 the number reached twelve. The consuls of schedule C are granted a small salary, generally \$1000. A notable exception to this rule is the appointment in 1864 of twenty-two commercial agents in this

⁶⁵ House Reports, 57th Con., Ses. I, Doc. 1313, January 21, 1903.

⁶⁶ Compiled from the Statutes at Large, 1856-1901.

^{66a} These figures cannot be combined to make comparisons as in many cases the same office appears in more than one classification. Some, like Vienna, went through as many as five changes.

class with salaries ranging from \$1500 to \$4000, due to the influence of the Civil War.⁶⁷

There has been only one attempt to introduce method into the classification of consulates. In 1874 seven grades were made, with salaries ranging from \$4000 to \$1000.⁶⁸ This classification is meaningless, however, except as a convenient means of formal grading, as there is no system of promotion from the lower to the higher ranks. In 1893 the salary of the first class was raised to \$5000.⁶⁹

The salaried consular force has, as a whole, been increasing steadily during the last two decades. In the period 1881-1901 one hundred and forty-six salaried non-trading consulates were added—an average of over seven new posts every year. This growth has been more marked in the present time. The growth in numbers has not been accompanied, however, with a development in salaries proportionate to the increased importance of the duties devolving upon the service, and the remuneration of the consular service still remains inadequate and inflexible. This lack of adaptability to the growth of commerce is well illustrated in the law of 1868, which provides that in a consulate with an income not over \$1500 and fees amounting to \$3000 in one year, the salary shall be \$2000.⁷⁰ This is an attempt to make the salary adjust itself to the importance of the post. The arrangement fails of its object, inasmuch as the importance of a post often can not be measured by the amount of the fees collected.

Up to 1856, as we have seen, fees were the regular method of compensating all consuls with the exception of those located in the Barbary States. There was no statement of the services

⁶⁷ 38th Con., Ses. I, Ch. 136, June 20, 1864.

⁶⁸ Statutes at Large, 43d Con., Ses. I, Ch. 275, June 11, 1874. The consulate at Liverpool was granted salary of \$6000.

⁶⁹ Statutes at Large, 52d Con., Ses. II, Ch. 182, March 1, 1893.

⁷⁰ Statutes at Large, 40th Con., Ses. II, Ch. 38, March 30, 1868. See a law with a similar object, Statutes at Large, 37th Con., Ses. II, Ch. 17, February 4, 1862; also Statutes at Large, 34th Con., Ses. I, Ch. 127, Sec. 15, August 18, 1856, allowing President to extend the prohibition to trade to feed consuls if advisable in any case.

for which official charges might be made, beyond the few for which provisions were made in the laws, further "official fees being exacted under the provision of the law of 1792, which provided that the powers there granted to consuls should not be construed to deny others arising" from the nature of the office. Of this condition, Secretary of State Van Buren said in 1831: "The fees are not well defined by law" . . . there is "no uniform rule . . . observed at present, . . . it is made no part of the duty of consuls to exhibit a statement of their official emoluments to any . . . department of government. We only know from . . . appeals . . . by individuals aggrieved . . . that discrepancies exist." Incomes were inadequate, necessitating different charges in different times and places.⁷¹ Secretary Livingston also urged that Congress "should establish a table of fees" as then there was "no written rule" and "usages differing in different ports"⁷² were the sole means of control. It was held that the system in use brought constant discredit upon the service, as the pay would not allow the consul to maintain the proper social standing, and the method of collecting almost forced the officer into constant disputes with ships' captains.^{72a} Secretaries Van Buren, Livingston and Forsyth were opposed to the principle of the fee system and favored not only the change in method of payment but the abolition of the exaction of any fees—a plan which had been proposed as early as 1816 by Secretary Monroe.⁷³ This change, they realized, could not be expected under the conditions then existing, and thus urged that as the next best substitute the charges should be made definite.

By rules made by the department, reports of fees were already required, but as they were not demanded by law nor rigorously insisted upon, they were fragmentary and often

⁷¹ Senate Doc., 21st Con., Ses. II, Vol. 2, Doc. 57, February 16, 1831.

⁷² Senate Doc., 22d Con., Ses. II, Vol. I, Doc. 83, 1833.

^{72a} Senate Doc., 25th Con., Ses. II, Vol. II, Doc. 467, May 2, 1838; also Secretary of State Buchanan to House Committee, House Reports, 29th Con., Ses. I, Vol. 4, Doc. 714, 1845-1846.

⁷³ See House Reports, 49th Con., Ses. I, Vol. VII, Doc. 1938, August 26, 1886.

lacking for years at a time.^{73a} This condition continued up to 1856 when by law quarterly reports were to be made to the treasury of all official fees from all offices, and the President was authorized to prescribe "what shall be, and the rates for, official fees such as are not in the law expressly stated and shall adapt the same by such differences as may be necessary to the various consulates."⁷⁴ Schedules of the fees charged were to be posted conspicuously in every consulate. Even under this law the reports were for years unsatisfactory on account of incomplete returns.⁷⁵

It should be remembered that the law of 1856 applied only to official fees. Unofficial fees are still allowed to all consuls.^{75a} In some consulates the amount of these fees far exceeds the salary of the office.⁷⁶ The law as to fees has remained unchanged since 1856, except in detail. The alterations are of two classes: first, modifying the fees chargeable by consuls on ships in British American ports on American ships, or those making regular trips abroad, and second, modifications in regard to the collection of fees by feed consuls or consular agents.

There has been a tendency to lessen the regulations upon trade with Canada. In 1859⁷⁷ a law was passed reducing the fee for the certificate of growth or production of goods and the certification of invoices to fifty cents. This law was re-

^{73a}See a table in House Executive Documents, 30th Con., Ses. II, Doc. 60, March 2, 1849.

⁷⁴For the fees as prescribed, see Sen. Ex. Doc., 35th Con., Ses. II, Vol. VII, Doc. 20, 1858-1859.

⁷⁵Dept. Circular, July 19, 1866, complains of the imperfect returns of fees collected. "Consular Circulars, 1854-1871," State Dept. Washington. Irregularities in the units collected at different consulates as equivalents of the fees prescribed was reported as late as 1897. R. S. Chilton's Report quoted in Dept. Circular, January 22, 1897. "Circulars to Consuls, 1893-1898." State Department, Washington.

^{75a}See, however, the bill published in the Appendix at the end of the monograph.

⁷⁶See testimony of Hon. T. H. Cridler, Third Assistant Secretary of State, S. Rep., 56th Con., Ses. I, Vol. IX, Doc. 12102, May 3, 1900.

"London safely \$20,000; Paris probably as much."

⁷⁷Statutes at Large, 35th Con., Ses. II, Ch. 75, March 3, 1859.

pealed in 1864,⁷⁸ when the fee for invoices was raised to \$1.00, but that for other stated services made free by a reciprocity treaty. In 1869⁷⁹ a law was passed providing that consuls in Canada were not to be allowed tonnage dues except on the first clearance of each year. A regulation of a similar character had as early as 1861 limited the fees chargeable against ships plying regularly between foreign ports and the United States by providing that such vessels should pay fees not more than four times a year.⁸⁰ Later, all American vessels were exempted from any fees for official services.⁸¹

Our system of collecting fees is, however, even now far from satisfactory. There is no efficient method in use of getting unquestionable accounts from out of the way feed offices. The House Committee on Foreign Affairs in 1886 said on this condition:⁸² "Under present conditions it is next to impossible to ascertain what the amount collected and retained (as fees) really is. . . . The returns made to the treasury afford only material for an approximate guess, and scarcely that as to the true amounts collected. The extent of this condition of affairs was only disclosed by the large number of protests received from feed consulates upon the proposal to change the method of payment to a salaried basis."

The fees collected for certification of invoices are entirely under the control of the department, as abstracts of the invoices are forwarded by the customs officers to the auditor's office and serve as a check upon the accounts of consuls; but there is at present no satisfactory way of checking some of the other official fees—where the service rendered does not call for a return by the person to whom the service is rendered.⁸³

⁷⁸ Statutes at Large, 38th Con., Ses. I, Ch. 136, June 20, 1864.

⁷⁹ Statutes at Large, 40th Con., Ses. III, Ch. 125, March 3, 1869.

⁸⁰ Statutes at Large, 37th Con., Ses. I, Ch. 49, August 5, 1861. By an executive order of June 24, 1873, this was extended to "American vessels running regularly to or *between* foreign ports." "Circulars to Consuls 1871-81," Washington, Dept. of State.

⁸¹ Statutes at Large, 48th Con., Ses. I, Ch. 121, Sec. 1, June 26, 1884.

⁸² House Reports, 49th Con., Ses. I, Vol. VII, Doc. 1938, August 26, 1886.

⁸³ Letter of Mr. W. J. Carr, Consular Dept., March 29, 1905.

The practice of collecting fees through "consular agents" was early made a part of our system. These officers were appointed by the individual consul and until 1856 they had no status as "consular officers,"⁸⁴ and were not included in the official lists of the service. By the regulations of the department, though not by law,⁸⁵ their appointment was to be immediately reported by the consul who was also to be held responsible for his appointee's acts. As this regulation was without legal force, the department was sometimes without the knowledge of even the names of our representatives at certain points.⁸⁶ It was the duty of the consul "when there are several seaports in a consular district to which American vessels resort . . . to appoint some fit person to be consular agent" who was to have the same duties as the consul, but reported only to his immediate superior. The consul and his agent arranged the division of fees between them.⁸⁷

Since 1856, although the formal method of appointment has been changed so as to make the choice dependent on the approval of the Secretary of State, the selection has still practically remained with the consul. In theory there was no change made, as it is held that the power has always been in the State Department. The consular agent was thereafter to receive in payment for his services the fees he should collect or such portion "as the President may direct," the remainder, if any, going to the principal officer. This provision did not work well, however, as it was possible for the principal officer by the establishment of consular agencies, to force business away from his own office into these unnatural channels, and thus in the subsequent division of the fees of the agencies increase his own salary at the expense of the treasury. To

⁸⁴ See lists of Consular Officers in Senate Doc., 22d Con., Ses. II, Vol. I, Doc. 83, 1833; and H. Ex. Doc., 30th Con., Ses. II, Doc. 60, 1849.

⁸⁵ See Livingston's Regulations, Sen. Doc., 22d Con., Ses. II, Vol. I, Doc. 83, 1833.

⁸⁶ See Dept. Circulars, October 10, 1853. "Circulars 1836-1858," Dept. of State, Washington.

⁸⁷ See Livingston's Regulations, Sen. Doc., 22d Con., Ses. II, Vol. I, Doc. 83, 1833.

remedy this defect was the aim of the law of 1868⁸⁸ providing that "all moneys received for fees at any vice-consulate or consular agency of the United States beyond the sum of \$1000 in any one year, and all moneys received by any consul or consul-general from consular agencies or vice-consulates in excess of \$1000 in the aggregate from all such agencies or vice-consulates shall be paid to the treasury of the United States."

This, however, as Inspector Keim pointed out in his reports of 1870-73, did not entirely stop the abuse, as the same practice was still possible below the amount of \$1000.

The use of consular agents retains all the evils of the former fee system as to the business to which it is applied. A single merchant in each port is given an intimate knowledge of the trade secrets of his rivals and can hardly be expected not to use this to his own advantage. The abolition of the grade, however, is impossible without putting something in its place. At present the consular agents are the most numerous class of the service, numbering almost as many as all other grades together.⁸⁹

The certification of invoices of goods declared for export to the United States has become an increasingly important part of the consular duties. It has been shown that this practice was begun on an important scale in 1818 and extended in 1823. The law of 1856 provided that no consul should certify any invoice unless satisfied "that the statements made under oath are true," and was followed by the act of 1862, strengthening the law that all invoices of goods dutiable ad valorem should be certified before the consul by providing that no goods dutiable ad valorem should be admitted to the United States without such certification. The duty of reporting any frauds upon the revenue to the State Department was enjoined upon all consuls.⁹⁰ The next year,⁹¹ in order to prevent any alterations in such invoices after certification, and certain other

⁸⁸ Statutes at Large, 40th Con., Ses. II, Ch. 38, March 30, 1868.

⁸⁹ The number of Consular Agents in 1902 was 392. In 1886, in a total of 696 consular officers, only 207 "appeared on the appropriation bill."

⁹⁰ Statutes at Large, 37 Con., Ses. II, Ch. 163, July 14, 1862.

⁹¹ Statutes at Large, 37th Con., Ses. II, Ch. 76, March 3, 1863.

frauds, it was provided that the invoices should be made in triplicate, one copy to be kept at the consulate, one given to the shipper, and one to be sent to the customs house officers. The law was further made to apply to all imports, dutiable ad valorem or not. The place where the invoice was to be issued was also defined in this law and modified again in 1890 by requiring that "the invoices" were to "be produced to the consul . . . in the consular district in which the merchandise was manufactured or purchased, as the case may be, for export to the United States,"⁹² a provision which had been urged for more than half a century.⁹³

To arrive at the true value of goods imported has often been a very difficult task, as merchants have not scrupled to undervalue their goods for this purpose, even when put under oath, and because when bills of sale have been made the basis of value, undervaluation has still been possible by the fictitious sale of goods by partners in Europe to their American houses. Another method of fraud upon the revenue was, until 1890, possible and popular. This was by shipping the goods first to a district where they were not manufactured and where, therefore, the consul would not be familiar with their cost, and thus would be unable to discover the undervaluation.

Frauds of undervaluation were early practiced, but were "extremely difficult of detection." As early as 1841 protests had been presented by our consuls in German and Swiss towns declaring the laws inefficient to prevent continued fraud.⁹⁴ An attempt at a remedy was made in the act of 1862 requiring that the certification be made at the consulate nearest the point of original shipment and ⁹⁵ in the act of 1865, by providing that before certifying invoices consuls might require evidence of genuineness to establish their truth either by oath of the persons

⁹² Statutes at Large, 51st Con., Ses. I, Ch. 407, June 10, 1890.

⁹³ House Reports, 27th Con., Ses. I, Doc. 20, June 21, 1841. Sen. Ex. Docs., 41st Con., Ses. II, Doc. 27, 1869. H. Ex. Docs. 42d Con., Ses. II, Vol. 15, Doc. 317, May 24, 1872.

⁹⁴ House Reports, 27th Con., Ses. I, Doc. 20, June 21, 1841.

⁹⁵ Statutes at Large, 37th Con., Ses. II, Ch. 163, July 14, 1862. Tariff bill, this section to become operative November 1, 1862.

presenting . . . or otherwise.⁹⁶ As shown in the report of Inspector Starring in 1869,⁹⁷ this law was of no value. He asserted "the undervaluation of costly goods is by far the most extensive fraud on the revenue, and seems to be almost universally practiced." The same abuses were reported by Inspector Keim. This abuse is one which has continued possible up to the present time, and from the nature of the question it seems likely that reliance will have to be upon the individual efforts of the various consuls in detecting frauds rather than on any legal remedy. This fact is illustrative of the importance of requiring men of special ability with permanent positions in the service. Commendable instances of the saving possible to the treasury through the efforts of the consuls are not wanting. A vigilant official corps can save yearly hundreds of thousands of dollars in this way. One instance is reported of an increase in duties collected⁹⁸ of over \$144,000 in a single consulate in one year. The Department of State considers that consuls already have all the power needed to ascertain the value of goods if such authority is *used*.⁹⁹

From the foregoing discussion it is plain that the reorganization of 1856 was but a partial measure. Besides its various minor defects which have necessitated supplementary legislation since that time, it only partially settled the system upon a salaried basis. It instituted an organization inflexible to the changes in the commercial needs of the country, a requirement essential if the service is to accomplish its objects. It left appointment to rest on political influence where it was most important that it should rest on fitness, and it left tenure of office dependent on political changes at home where it was most important that the advantages of experience in the service should be preserved.

To remedy these defects has been the aim of subsequent reform movements. The shortcomings to be done away with

⁹⁶ Statutes at Large, 38th Con., Ses. II, Ch. III, March 3, 1865.

⁹⁷ Senate Ex. Docs., 41st Con., Ses. II, Doc. 27, 1869-1870.

⁹⁸ House Report, 57th Con., Ses. I, Doc. 1313, January 21, 1903. Letter from Secretary of Treasury to Secretary of State, June 27, 1899, quoted by DuBois, former consul at St. Gall, Switzerland.

⁹⁹ House Docs., 42d Con., Ses. II, Doc. 221, March 28, 1872.

were early realized, and by 1868¹⁰⁰ were called to the attention of Congress in the recommendations for reform by the Joint Committee on Retrenchment. Mr. Patterson, the chairman, in presenting the recommendations held that: Special knowledge and experience are essential to the success of the system; men should be educated for the profession as a "career corresponding to the military and naval service." Uncertain tenure makes impossible any esprit de corps or any efficiency derived from familiarity with the work and the people. To obviate these defects "the rules which prevail in business circles should be carried into government." The committee favored the granting of a salary to all offices where business was large enough to justify it, and the abolition of all other posts. A graded system was proposed, to be filled by competitive examination of the applicants, the higher grades being used as a reward to those showing special proficiency in the lower posts, thus doing away with the stationary character of the present system.

These defects, so clearly outlined half a century ago, still remain in the service. The attempts at reform since have merely repeated the same contentions as to the failings of the present system though they have differed at times as to the details in the remedy to be applied.

In March, 1872, a bill for reorganization similar to the above passed the Senate, but got no farther.¹⁰¹ In 1884 the subject was strongly recommended to the attention of Congress by President Arthur and Secretary of State Frelinghuysen. All consuls, it was again urged, should be given suitable salaries, all fees, unofficial as well as official, should go to the treasury, a rigid commission of inspection should be instituted and the office of consular agent should be abolished.¹⁰² A similar bill in 1886¹⁰³ emphasized again the importance of a graded service with promotion for efficiency.

¹⁰⁰ Sen. Rep., 40th Con., Ses. II, Doc. 154, July 2, 1868.

¹⁰¹ House Misc. Doc., 42d Con., Ses. III, Vol. II, Doc. 61, March 25, 1872.

¹⁰² House Docs., 48th Con., Ses. I, Vol. 26, Doc. 121, March 20, 1884.

¹⁰³ House Report, 49th Con., Ses. I, Vol. VII, Doc. 1938, August 26, 1886.

There was no effort made for change from this year till 1895 when the present series of attempts began. In this latter year a bill was favorably reported to the Senate which contained provisions similar to those of a decade before.¹⁰⁴ The same year came an effort on the part of the executive in President Cleveland's executive order of September 20, 1895. This was an attempt to bring the service at least partly under a system of examinations for proof of fitness, without waiting for legislative action. It provided that any vacancy in consulates with salaries ranging from \$1000 to \$2500 was in the future to be filled in one of the following ways:

- (a) By a transfer from some other division of the Department of State where training had previously qualified the applicant.
- (b) By appointment of a person who had previously served in a satisfactory manner in the Department of State.
- (c) By the appointment of a person who having furnished evidence of character is then selected by the President for examination and thereby found to be qualified.¹⁰⁵

Such examinations were to be held by a board of three persons appointed by the Secretary of State who was also to prescribe the subjects and mode of examination.

By an executive order issued November 10th, 1905, President Roosevelt extended these requirements to *all* consulates in which the salary is over \$1000.^{105a}

Though these measures seem to promise much, their effect has been slight. Examinations are held only after selection of the candidates and a failure to pass is almost unknown, though the department officials are of the belief that the character of applicants has been somewhat improved by the requirement. The pressure upon the executive for these offices is so great, especially since it has been concentrated on the foreign service alone, by the removal of other offices through the Civil Service

¹⁰⁴ Senate Report, 53d Con., Ses. III, Vol. II, Doc. 886, February 6, 1895.

¹⁰⁵ Senate Report, 54th Con., Ses. I, Vol. V, Doc. 1073, September 20, 1895.

^{105a} Executive Order, Consular Service, November 10th, 1905.

Act, that there seems to be little possibility of any permanent reform in appointment to be expected from the executive branch alone.

Agitation for reform by legislation has been continuous since 1895. Senator Morgan's bill was re-presented with additions in 1896¹⁰⁶ and was strongly advocated by Senator Lodge and some of our leading representatives in the foreign service. In 1897¹⁰⁷ a bill was introduced by Representative Adams of Pennsylvania to provide for a commission to be appointed by the President to work up a plan for reorganization along certain general lines which embraced practically the same provisions as the Morgan-Lodge measures.

At every Congress since 1897 one or both of these plans has been urged upon the attention of the national legislature.¹⁰⁸

The most interesting development in these later movements for reform has been the interest taken in the subject by the business organizations of the country. This has been especially marked since 1898 with our rapidly increasing exports,

¹⁰⁶ Senate Report, 54th Con., Ses. I, Vol. 5, Doc. 1073 (May 27, 1896, last part).

¹⁰⁷ House Report, 54th Con., Ses. II, Vol. III, Doc. 3060, March 1, 1897.

¹⁰⁸ House Report, 55th Con., Ses. II, Vol. VI, Doc. 1460, May 27, 1898. House Report, 56th Con., Ses. I, Vol. III, Doc. 562, March 8, 1900. Senate Report, 56th Con., Ses. I, Vol. IX, Doc. 1202, May 3, 1900. House Bill (H. R. 84), 57th Con., Ses. I, December 2, 1901. Senate Bill (S. 223), 57th Con., Ses. I, December 4, 1901. Senate Bill (S. 1618), 57th Con., Ses. I, December 12, 1901. House Bill (H. R. 7482), 57th Con., Ses. I, December 19, 1901. Senate Report, 57th Con., Ses. I, Doc. 499, February 19, 1902. House Bill (H. R. 16023), 57th Con., Ses. I, December 13, 1902. House Report, 57th Con., Ses. I, Doc. 1313, January 21, 1903. House Bill (H. R. 854), 58th Con., Ses. I, November 10, 1903. Senate Bill (S. 19), 58th Con., Ses. I, November 11, 1903. House Bill (H. R. 11677), 58th Con., Ses. II, February 3, 1904. Senate Bill (S. 4267), 58th Con., Ses. II, February 10, 1904. House Bill (H. R. 19012), 58th Con., Ses. III, February 16, 1905. House Bill (H. R. 457), 59th Con., Ses. I, December 4, 1905. Senate Bill (S. 680), 59th Con., Ses. I, December 6, 1905. Senate Bill (S. 1345), 59th Con., Ses. I, December 11, 1905. Senate Report, 59th Con., Ses. I, Doc. 112, January 10, 1906. Senate Bill (S. 1345), 59th Con., Ses. I, January 31, 1906. House Bill (H. R. 14524), 59th Con., Ses. I, February 9, 1906.

especially of manufactured goods. The initiative was taken by the Cleveland Chamber of Commerce, represented by Mr. Harry A. Garfield, and supported by trade organizations from various parts of the country. The representatives appeared before the committees on Foreign Affairs and presented arguments for reform and petitions from boards of trade and other business organizations from all parts of the United States. Similar efforts have been made before the committees of more recent Congresses with an increasing number of petitioners. The movement seems to be an indication that the business interests of the country have, as the representatives say, awakened to the importance of the consular service in facilitating trade, and are anxious to put in use in the trade service of the nation the same common sense methods they themselves use in the management of business in general.

To summarize the movement for reform at present, the objects sought are:

1. To pay salaries to all posts with business large enough to justify appointments, and to make these salaries enough to secure efficient service.
2. To abolish the system of remuneration through fees altogether, returning all fees, official and unofficial to the treasury.
3. To abolish the office of consular agent and commercial agent.
4. To require all applicants for positions to pass a practical examination to test the suitability of their preparation for the work.
5. To remove the offices from political influence and give permanence to the service, making it a career in which those showing special proficiency may count upon promotion for ability proven.
6. To provide for adequate inspection to check any abuse which may arise.

APPENDIX TO CHAPTER I.

LIST OF LAWS RELATING TO THE CONSULAR SERVICE.

- April 14, 1792. Statutes at Large. 2d Congress, Session I, Chapter 24. Act establishing the consular service and defining powers enacted to carry out the convention with France.
- July 6, 1797. S. at L. 5th Con., Ses. I, Ch. 12. A salaried consul to Algiers at \$4,000.
- March 2, 1799. S. at L. 5th Con., Ses. III, Ch. 22, Section 81. An act requiring certification of invoices in case of re-exportation of goods.
- February 28, 1803. 7th Con., Ses. II, Ch. 9, S. at L. Defining the duties of ship's masters and consuls as to ship's lists and the discharge of seamen.
- May 1, 1810. S. at L. 11th Con., Ses. II, Ch. 44. No consular outfits to be allowed. No consul in Barbary to charge to the United States more than \$3,000 in one year. No Barbary consul to be engaged in trade.
- February 28, 1811. S. at L. 11th Con., Ses. III, Ch. 28. Additional compensation to be allowed to ship masters for seamen brought home from ports where there are no consuls.
- April 20, 1818. S. at L. 15th Con., Ses. I, Ch. 79. Act to regulate collection of duties on imports and tonnage. Invoices for advalorem goods.
- March 1, 1823. S. at L. 17th Con., Ses. II, Ch. 21. Invoices of goods dutiable advalorem to be certified before consul.
- March 3, 1835. S. at L. 23d Con., Ses. II, Ch. 33. Punishments for consular officers who falsely certify to invoices or other papers.
- April 4, 1840. S. at L. 26th Con., Ses. I, Ch. 6. The provisions of the act of 1803 extended to whaling vessels.
- July 20, 1840. S. at L. 26th Con., Ses. I, Ch. 48. Additional regulation as to the discharge of seamen and the duties of consuls towards them.
- August 16, 1842. S. at L. 27th Con., Ses. II, Ch. 181. Act requiring foreign regulation of commerce to be laid annually before Congress.
- August 30, 1842. S. at L. 27th Con., Ses. II, Ch. 270. Explanatory of the advalorem duty to be laid on certain classes of goods.
- February 20, 1845. S. at L. 28th Con., Ses. 2, Ch. 17. Certain officers of the navy to have the powers of consuls in certain cases.
- March 3, 1845. S. at L. 28th Con., Ses. II, Ch. 69. Consuls to pay due postage for letters destined for the United States.
- July 29, 1850. S. at L. 31st Con., Ses. I, Ch. 27. Complaints to consul as to seaworthiness of vessels. Amending act of 1840.

- March 3, 1855. S. at L. 33d Con., Ses. II, Ch. 175. British Consul-General in Canada.
- March 1, 1855. S. at L. 33d Con., Ses. II, Ch. 133. Proposed reorganization embracing practically the provisions of the following year.
- August 18, 1856. S. at L. 34th Con., Ses. I, Ch. 127. Reorganization of the service. Provisions as to salaries, fees, business, consular pupils, absences, bonds, secondary officers, tariff fees, accounts of treasury, contingent expenses, records, selling estates.
- February 7, 1857. S. at L. 34th Con., Ses. III, Ch. 38. Repealing law authorizing consular pupils.
- March 3, 1859. S. at L. 35th Con., Ses. II, Ch. 75. Salary. Modification of invoice regulations for Canada.
- June 22, 1860. S. at L. 36th Con., Ses. I, Ch. 179. Extraterritorial courts: powers of established and defined.
- February 28, 1861. S. at L. 36th Con., Ses. II, Ch. 58. Abolition and establishment of offices.
- March 3, 1861. S. at L. 36th Con., Ses. III, Ch. 79. Certain posts President authorized to discontinue and transfer to other posts.
- August 2, 1861. S. at L. 37th Con., Ses. I, Ch. 35. President authorized to appoint consuls at salaries not to exceed \$1,500, to continue during the Rebellion.
- August 5, 1861. S. at L. 37th Con., Ses. I, Ch. 49. Modification of fees for vessels running regularly between foreign ports and the United States.
- February 4, 1862. S. at L. 37th Con., Ses. II, Ch. 17. Salaries of interpreters and marshalls in consular courts. Expenses for prisons in Oriental countries.
- February 19, 1862. S. at L. 37th Con., Ses. II, Ch. 27. Duties of consuls in preventing the Coolie trade.
- June 5, 1862. S. at L. 37th Con., Ses. II, Ch. 96. Diplomatic representatives with consular power authorized to Hayti and Liberia.
- July 14, 1862. S. at L. 37th Con., Ses. II, Ch. 163. Relating to invoices and consular reports on frauds on the revenue.
- February 4, 1863. S. at L. 37th Con., Ses. III, Ch. 19. Salary.
- March 3, 1863. S. at L. 37th Con., Ses. III, Ch. 79. Abolition and establishment of certain consulates. Invoices.
- March 3, 1863. S. at L. 37th Con., Ses. III, Ch. 76. To punish frauds on the revenue. Respecting invoices of imported goods.
- March 7, 1864. S. at L. 38th Con., Ses. I, Ch. 20. Exempting non-citizen consuls of foreign countries from the income tax.
- April 29, 1864. S. at L. 38th Con., Ses. I, Ch. 70. Sale of vessels in foreign waters and dues to be collected therefrom.
- June 20, 1864. S. at L. 38th Con., Ses. I, Ch. 136. Authorizing the appointment of thirteen consulate clerks.

- June 28, 1864. S. at L. 38th Con., Ses. I, Ch. 170. Employment of persons not citizens on United States ships.
- June 30, 1864. S. at L. 38th Con., Ses. I, Ch. 173. Foreign consuls not citizens exempted from income tax.
- June 30, 1864. S. at L. 38th Con., Ses. I, Ch. 171. Invoices to be made out in weights and measures of the country from which importation is to be made.
- March 3, 1865. S. at L. 38th Con., Ses. II, Ch. III. An act to further provide for the verification of invoices.
- July 25, 1866. S. at L. 39th Con., Ses. I, Ch. 233. Fees of consular officers not in schedules B. & C. Salaries.
- July 28, 1866. S. at L. 39th Con., Ses. I, Ch. 206. Extending the consular court system of certain countries.
- March 30, 1868. S. at L. 40th Con., Ses. II, Ch. 38. Amount of fees retainable by consular agents and principal officers regulated. Salaries of consuls in consulates yielding \$3,000 in fees established at \$2,000.
- July 27, 1868. S. at L. 40th Con., Ses. II, Ch. 254. Relating to declarations of goods imported from a foreign country.
- March 3, 1869. S. at L. 40th Con., Ses. III, Ch. 125. Regulating practice in collecting fees. Penalties for false accounts.
- March 26, 1869. S. at L. 41st Con., Ses. I, Joint Resolution No. 3. Relative to the refunding of certain fees paid into the treasury.
- July 1, 1870. S. at L. 41st Con., Ses. II, Ch. 194. Regulating the appeal from consular courts. Extending extraterritorial rights.
- July 11, 1870. S. at L. 41st Con., Ses. II, Ch. 237. Authorizing the appointment of consular inspectors.
- March 3, 1871. S. at L. 41st Con., Ses. III, Ch. 114. Appropriations for extraordinary expenses in Franco-Prussian War.
- April 12, 1871. S. at L. 41st Con., Ses. I, Ch. 21. Deficiency bill. Salaries established.
- May 17, 1872. S. at L. 42d Con., Ses. II, Ch. 169. Special act. Salary to the consul at Tien Tsin.
- May 22, 1872. S. at L. 42d Con., Ses. II, Ch. 194. Consulate inspection act repealed.
- June 8, 1872. S. at L. 42d Con., Ses. II, Ch. 335. Payment of postage on letters detained in foreign ports.
- February 22, 1873. S. at L. 42d Con., Ses. III, Ch. 184. Consul-General at Constantinople to act as Secretary of Legation. No extra salary. General increase in allowance for office rent.
- March 3, 1873. S. at L. 42d Con., Ses. III, Ch. 243. Consul may remit seaman's wages if he can be reshipped without expense to the United States.
- June 11, 1874. S. at L. 43d Con., Ses. I, Ch. 275. Reclassification of consulates by salaries. Clerk hire allowance for certain consulates.

- June 17, 1874. S. at L. 43d Con., Ses. I, Ch. 294. Consular absences regulated.
- February 18, 1875. S. at L. 43d Con., Ses. II, Ch. 81. Salaries.
- March 3, 1875. S. at L. 43d Con., Ses. II, Ch. 157. Certain consulates freed from obligations not to trade.
- March 3, 1875. S. at L. 43d Con., Ses. II, Ch. 141. Immigrants from China and Japan to have certificates from consul showing that they came of their own free will, and not under contract or for immoral purposes.
- March 3, 1875. S. at L. 43d Con., Ses. II, Ch. 153. Salaries.
- August 15, 1876. S. at L. 43d Con., Ses. I, Ch. 288. Salaries. Clerk hire reduced.
- February 26, 1877. S. at L. 44th Con., Ses. II, Ch. 65. Salaries. Clerk hire restored.
- June 6, 1878. S. at L. 45th Con., Ses. II, Ch. 155. Consuls to furnish prices current to the Treasury whenever required.
- January 27, 1879. S. at L. 45th Con., Ses. III, Ch. 28. Consuls to report quarterly on imports and exports stating market prices, also on general information such as markets, labor, manufactures, etc.
- February 24, 1881. S. at L. 46th Con., Ses. III, Ch. 78. Salaries. Clerk hire in these years steadily extended.
- July 1, 1882. S. at L. 47th Con., Ses. I, Ch. 262. Salaries. Appropriation \$20,000 for printing consular reports.
- February 26, 1883. S. at L. 47th Con., Ses. II, Ch. 56. Salaries.
- March 3, 1883. S. at L. 47th Con., Ses. II, Ch. 143. Salaries.
- June 26, 1884. S. at L. 48th Con., Ses. I, Ch. 121. American vessels freed from certain fees for official consular services.
- July 7, 1884. S. at L. 48th Con., Ses. I, Ch. 333. Salaries.
- February 25, 1885. S. at L. 48th Con., Ses. II, Ch. 150. Salaries.
- March 3, 1887. S. at L. 49th Con., Ses. II, Ch. 342. Salaries.
- June 18, 1888. S. at L. 50th Con., Ses. I, Ch. 393. Reports on prices current to be made to the Treasury by consuls when required; at least yearly on agriculture, etc. Secretary of State to publish what he deems best.
- July 11, 1888. S. at L. 50th Con., Ses. I, Ch. 614. Salaries.
- February 26, 1889. S. at L. 50th Con., Ses. II, Ch. 278. Salaries.
- June 10, 1890. S. at L. 51st Con., Ses. I, Ch. 407. Invoices.
- July 14, 1890. S. at L. 51st Con., Ses. I, Ch. 706. Salaries.
- March 3, 1891. S. at L. 51st Con., Ses. II, Ch. 545. Special commercial agent in Congo. Salaries. Appeal from Consular Courts taken away.
- July 16, 1892. S. at L. 52d Con., Ses. I, Ch. 197. Salaries.
- March 1, 1893. S. at L. 52d Con., Ses. II, Ch. 182. Salaries. Maximum for keeping prisoners in the Orient per day fixed at 75 cents. Class one raised to \$5,000.

- July 26, 1894. S. at L. 53d Con., Ses. II, Ch. 166. Salaries.
- March 2, 1895. S. at L. 53d Con., Ses. III, Ch. 185. Salaries. Allowance for keeping prisoners reduced to 50 cents per day.
- February 26, 1896. S. at L. 54th Con., Ses. I, Ch. 34. Salaries. Clerk hire extended.
- February 20, 1897. S. at L. 54th Con., Ses. II, Ch. 268. Salaries. Inspection of consulates provided for by officers of the United States.
- March 9, 1898. S. at L. 55th Con., Ses. II, Ch. 55. Salaries. Appropriation for publishing consular reports raised to \$30,000.
- February 9, 1899. S. at L. 55th Con., Ses. III, Ch. 128. Salaries.
- April 4, 1900. S. at L. 56th Con., Ses. I, Ch. 159. Salaries.
- March 2, 1901. S. at L. 56th Con., Ses. II, Ch. 802. Salaries.

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CHAPTER II.

CONSULAR ORGANIZATION, RIGHTS, AND DUTIES OF CONSULS.

The consular service at present has thirteen grades of officers exercising duties of widely dissimilar character. In the highest grade, consul-general, there are now included over forty offices,¹ located at the cities most important in commerce with the United States, or where local political conditions make it advantageous for us to have an officer bearing that title. Ordinarily but one consulate-general is located in a country, though there are several exceptions, notably Germany, where three such offices are stationed. Except in Calcutta, Dresden and Mexico, the consulates-general exercise supervision of the consulates within specified surrounding districts.² This supervision, however, is formal rather than real, inasmuch as it extends only "so far as it can be exercised by correspondence," and pertains to the enforcement of the "consular regulations," but in no sense to the auditing of accounts. In certain districts also all correspondence and reports from the consuls must be sent to the government through the consulates-general.

As "principal officers" under the consuls-general, are the consuls and commercial agents. The latter class in the character usually held by representatives of the United States bearing that name, are peculiar to our service. They possess all the powers and privileges of consuls and differ from them only in grade, as they are commissioned by the President directly and not like the two upper classes by the President "with the consent of the Senate." Representatives bearing the same title, though with inferior powers, have been appointed by the government on various occasions, and indeed those appointed before 1856 usually had only the limited rights.³ The subor-

¹ Statutes at Large, 29, p. 32.

² See Consular Regulations, Washington, 1896.

³ See act of August 18, 1856, establishing them with the same powers as consuls. See also G. Hunt, History of the Department of State, Washington, 1893.

dinate consular officers are of three classes, vice- and deputy-officers, and those employed only in countries where the United States has rights of extra-territoriality. Vice-consular officers are not, as in some European systems, independent officers exercising consular duties in less important places, but are substitutes who act with full power in the absence of the principal officer, which time is the only one in which they are invested with authority.⁴ Deputy-consular officers are substitutes who may perform consular duties either in the presence or the absence of the principal, but who in his absence can *not* assume full charge of the office.

Consular agents are appointed by the local principal officer with the approval of the Department of State. Though they perform practically the same services as consuls, they act only as the representatives of their immediate superiors, and make no direct reports or returns to the government. In all cases where possible, American citizens are favored in appointment to these offices, though in the great majority of cases foreigners must be accepted. The consular clerks, numbering now thirteen, are the remnant of the attempt to place the consular service upon the basis of examination for efficiency. They are appointed only after examination, and are not removable except for failure of duty.

The consular officers peculiar to the Oriental countries are interpreters and marshals. As their titles show they have merely to do with translating and the functions of the consular courts.

Rights and Powers.

I. *Under International Law.* Consuls in Christian countries do not enjoy the rights of extra-territoriality, and the immunities and privileges granted to diplomatic representatives. They are not representatives of their home *government* and may not address the officers of the country to which they are assigned except by custom or in the absence of a diplomatic representative. They have, however, certain rights under the law

⁴ Revised Statutes, Section 1674.

of nations. The consul may erect the national arms over the door of his office and of his residence, he is exempted from serving on juries, he may claim for his official archives and furniture inviolability and exemption from seizure, and he is protected from the billeting of soldiers in his residence. On the other hand, he is subject to the payment of taxes, municipal duties, and imposts, and is under "the civil and criminal jurisdiction of the country in which he resides." Merchant consuls have more restricted rights and probably can claim no personal privileges not awarded to all citizens of the state. In non-Christian countries, consuls retain more of the rights and immunities of diplomatic representatives, certain judicial powers, the right of worship and "to some extent the right of asylum." They are free from both the civil and criminal jurisdiction of the country, and are generally exempted from all personal impositions to which a native is subject.

2. *Guaranteed by Treaties.* The various treaties contain numerous provisions defining and extending the rights of our consuls in the countries involved. In many cases, however, the treaties do *not define* the extent of the consular privileges, as custom often allows a much greater power than is stated. Among the most frequent of the privileges guaranteed in treaties are the following: The "most favored nation" clause (appears in thirty-six cases), the inviolability of the archives (twenty-four) and of the consular dwelling (twelve), exemption from arrest (nine), from appearing as witness (eight), and from taxation (twenty-five). In some countries also the treaty guarantees that they may apply to the government in case of the infraction of treaties (eleven), take depositions (eleven), settle disputes between masters and seamen (eighteen), and adjust claims in cases of wrecks and salvage (thirty-three).

(Duties Imposed by the Home Country.)

The duties the consul is called on to perform by citizens of his own country are as various as those devolving upon any officer in the government. Without attempting to give any idea of the character of these personal requests, the chief duties outlined by the government may be classified as follows:

1. Commercial and other departmental duties as confined to the making of reports.
2. Protection of the Customs Revenue.
3. Duties in relation to shipping.
 - (a) Care and inspection of ships, their condition and sale abroad, the custody of ship's-papers.
 - (b) General supervision of seamen, including enlistment abroad, disputes, discharge, wages, desertions, and relief.
4. Duties to other government representatives chiefly diplomatic and naval officers.
5. Duties in connection with immigration and the protection of our quarantine regulations by the issuance of health certificates.
6. Duties to citizens abroad, such as the visaeing of passports, protection in private rights, and the administration of the estates of those dying abroad intestate.
7. Extra-territorial duties.⁵

Development of the Consular Classes. The organization of the service and the duties which we have just outlined are in general the same as when the service was formed. In the law of 1792 it is true the only classes of consular officers provided were the consuls and vice-consuls. However, the class designated as "commercial agents" were a division inherited from the days of the Revolution, and except for changes in power, have remained a permanent part of our representation. Consular agents, also, though not distinctly provided by law, and although they were not considered as regular consular officers, were recognized in the circulars issued by the Department of State as early as 1801.⁶ Further, even consular clerks, though there was no appointment by statute until the law of 1856, were recognized as a class of officers by the convention with France

⁵ The details under each division may be found in *Consular Regulations*, Washington, 1896; also the rules in regard to fees, absences, salaries, methods of invoicing and making reports, etc.

⁶ Circulars and Papers relating to Consuls, State Department, Washington (MS.).

in 1788. The only notable change in the classification of our consular service has been the introduction of the grade of consul-general. The need for a higher grade than that of consul made itself felt not from any development within the service, but through pressure from without. In Oriental countries certain of our representatives found themselves at a disadvantage in obtaining interviews and concessions from the officers of the governments because they held simply the title of *consul* in contrast to the *consuls-general* of other powers.

Secretary Buchanan in 1846 recommended that the higher grade *be granted in such cases*,⁷ and Congress in 1854 established the title for the office at Alexandria.⁸ This was our first consulate-general. It was merely a form and indicated no superior power or supervision over other offices. In the following year a law was passed authorizing the President "to bestow the title of consul-general upon any consul in Asia or Africa, when in his opinion such title will promote the public interest."⁹ Later in the same year the consulate-general at Simoda, Japan, was established, and another in British North America which was our first in a Christian country.¹⁰ By the legislation of 1856 the grade was definitely adopted as a part of our system, and the number of offices since that time has steadily increased. The extension of supervisory power over the consulates of the various districts is also a gradual development.¹¹ Though the duties of the consuls have not changed much in scope, with the exception of the development of their commercial functions, the relative importance of the different functions has been subject to great variations. In the early days of our history, as has already been said, the greater part of the consular duties was in relation to seamen, especially the supervision of their discharge and the settlement of disputes between them and the masters. The decline in the importance of our commerce upon

⁷ House Doc., 29th Con., Ses. II, Doc. 12, Dec. 15, 1846.

⁸ Statutes at Large, 33d Con., Ses. I, Ch. 242, August 4, 1854.

⁹ Statutes at Large, 33d Con., Ses. II, Ch. 133, February 28, 1855.

¹⁰ Statutes at Large, 33d Con., Ses. II, Ch. 175, March 3, 1855.

¹¹ See Department Circulars, executive orders and the various editions of the Consular Regulations.

the seas, the increased number of our citizens residing and traveling abroad, and the greater emphasis of the commercial side of the consular office, have at present reduced the care of seamen to a comparatively unimportant position among the consular functions.

In connection with their care, however, arose before 1870 one of the most aggravated abuses that ever affected the service. The duty to aid American mariners made possible the entry of numerous false claims for reimbursement by dishonest consuls. Entries for clothes, board and hospital charges were made in cases where absolutely no such relief had been given. Brazen examples of this fraud were reported for over a quarter of a century¹² before any effective check was put upon them. The greatest dishonesty was shown in the posts in the South Pacific, while in Europe, where the trade was greatest, there was comparatively little cause for complaint. The extent to which the evil had grown is shown from the fact that in a single year the expenditures for relief in four of the consulates on the south Pacific coast reached \$114,000 or about \$8,000 "more than the disbursements of all our other consulates reported."¹³ The aid was supposedly given to men from whaling schooners, though it was shown that such an amount could not possibly have been thus expended. Though the practice was lessened by the time of Inspector Keim's¹⁴ visit, even then the following surprising situation was disclosed. At the four principal ports of Europe, Liverpool, London, Havre and Hamburg, the expenditure for a single year amounted to but \$2764, while the four least important posts of the west coast of South America, Talcahuano, Payta, Tumbes and Guayaquil, disbursed \$14,788 for the same purposes. The visit of the inspector had a salutary effect at once and the year following the expenditures fell off enormously, as for example at Tumbes, where in 1870 \$3646 had been spent in relief, while in 1871 \$204 was all that was required. Since 1870, with the development of

¹² House Doc., 29th Con., Ses. II, Doc. 12, December 15, 1846.

¹³ Report of Fifth Auditor Underwood, November 29, 1861.

¹⁴ See Keim's reports, 1870-1873.

better systems of communication, restrictive laws and critical auditing of the accounts in the department, dishonesty of this sort has been practically eliminated.

With better facilities for travel, the duties to American citizens other than seamen have greatly increased. In many cases the consuls are subject to imposition in this respect on the part of their fellow countrymen. Further, cases occur where worthy citizens of the United States arrive at the consulate in destitute circumstances. For the aid of such there is no provision in the consular budget. Any monetary assistance given to citizens is a purely personal advance on the part of the consul, for which he may claim no return from the government. There have been a number of cases, however, in which consuls have been reimbursed for aid given under exceptional circumstances, as for aid given unfortunate citizens in the Franco-Prussian war,¹⁵ in defense of private rights in South American courts,¹⁶ and in relieving a band of colonization enthusiasts¹⁷ stranded in the Holy Land. Such other aid as the consul may be able to give in facilitating access to persons or places, and in protection from unjust exactions from the local police and municipal authorities have become increasingly important. In times of war¹⁸ our consuls are a valuable aid in watching the movement of the enemy's vessels and guarding the treaty rights of the United States from violation. In this work they have proven an efficient supplement to the diplomatic corps.

The duties of our consuls which have developed to the greatest degree are those in relation to the extension of our foreign commerce, the discussion of which will be reserved until later. The changes in the duties which have come through natural causes have been accompanied by greater definiteness, and an

¹⁵ House Doc., 42d Con., Ses. II, Doc. 9 and 10, December 5, 1871.

¹⁶ Senate Report, No. 307, June 15, 1854.

¹⁷ Senate Report, 49th Con., Ses. I, Doc. 237, March 17, 1886. Additional cases in Bremen, Panama, Habana, Hong Kong, Mauritius. Senate Report, 37th Con., Ses. II, Doc. 59, June 16, 1862.

¹⁸ For a description of the services in the Civil War, see James Monroe, Oberlin Thursday Lectures, Oberlin, 1897. For services in Spanish War, see Dept. Circulars, Washington.

extension of the demands made in the rules given out by the Department of State. Up to 1833 there was little direction of the service on the part of any one. With the exception of scattered "circulars" sent out for their instruction, there was no printed guide for action beside the general principles laid down in the books of international law in use at the time. Realizing that this condition of affairs led to a deplorable lack of uniformity, Secretary Livingston issued in 1833 a short set of regulations "embodying directions . . . and producing uniformity in all the consular proceedings."¹⁹ It briefly outlined the consular duties in the keeping of records, in relation to seamen, and to intestates dying abroad. The publication was, however, far from sufficient for the needs of the service, and complaints of the uncertainty of the consular powers were frequent both from within and outside of the service. A revision of the rules was made in 1849, but not till 1857 was a tolerably complete set formulated. In this and subsequent editions the rules which had been made by the secretaries are combined with the executive orders issued, and the sections of the statutes and the court decisions relating to consular duties. The present "Regulations"^{19a} have developed through a long series and from a definite and comprehensive guide.

Development Within the Department. Changes have also been effected in the management and supervision of the service at home. At first there was no differentiation of branches within the Department of State, but as the business became more complicated, bureaus were formed and certain clerks put over each division. The first to receive legal sanction was the Diplomatic and Consular Bureau. Originally there were two chiefs in each of the branches. In fact, however, they were merely clerks of Class IV until the act of May 3, 1873, when

¹⁹ Sen. Doc., 22d Con., Ses. II, Doc. 83, March 21, 1833.

^{19a} "Regulations Prescribed by the President for Consular Officers of the United States" (1857), a somewhat similar publication was "General Instructions to the Consuls and Commercial Agents of the United States" prepared under Secretary Marcy in 1855. Editions of the Regulations have appeared as follows: 1836, 1849, 1855, 1856 (Manual), 1857, 1863, 1868, 1870, 1874, 1881, 1888, 1896.



they were recognized as chiefs of Bureau, and given an increase of salary to \$2400. The act of June 30, 1874, concentrated the duties of each branch under one chief at the same salary as before.²⁰ The principal duty of the consular bureau is the supervision of correspondence with the consuls in regard to their official duties, "and with the several departments of the government and individuals on the same subject."²¹ In addition this bureau is charged with the duty of giving instruction to newly appointed consuls concerning the duties and needs of their particular offices.

In the growth of the department, the commercial correspondence with the consuls has become too voluminous to be handled by the Consular Bureau itself. As early as 1842 Secretary Daniel Webster suggested that the compilation of the reports be put into the hands of a definite officer. No action was taken following this suggestion until 1856, when by law the "Statistical Office of the Department of State" was authorized. This was in reality an adoption of an organization which had grown up within the department two years before. In 1874 Congress provided for a special Bureau of Statistics in the Department of State to edit the Commercial Relations and other information relating to trade. This was superseded in turn in June, 1898, by the "Bureau of Foreign Commerce," the name being changed by Congress in enlarging the scope of the work to be done and in order to avoid confusion with an office with a similar title in the Treasury Department. The new organization at once sprang into greater usefulness, the change being brought about by the efforts of the department officials.²² Under this management our commercial publications have, to a much greater extent than ever before, acquired the concreteness which alone can make them of value.

²⁰ See Statutes at Large, 17, p. 509, also 18, p. 90. The salary was reduced in 1876 to \$2100.

²¹ G. Hunt, *History of the Department of State*, Washington, 1893. For the functions of the Bureau, see Report of Select Committee of the Senate under Senate Resolution, March 3, 1887, Washington, 1888, Vol. 3, p. 7 et seq.

²² See G. Hunt, *History of the Department of State*.

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CHAPTER III.

EXTRATERRITORIALITY.

The right of extraterritoriality is in fact a limitation on the sovereignty of the states by which the right is granted. The country exercising it extends its dominion over its own subjects even when residing in the foreign country involved. The entire national sovereignty and law is transplanted and made to apply not to territory, but to persons. Such rights are of course abnormal in character, and can not be claimed in Christian countries.¹ The only privileges of a similar character granted in Christian states are in the treaties which provide that the settlement of disputes between masters and seamen shall be in the powers of the consuls. But there is here a vast difference, as such disputes presumably occur outside the dominion of the foreign state, while the acts adjudged in extraterritorial courts proper are presumably committed *within* the foreign country.

In civilized countries one of the most incontestible of the rights of the sovereign state is to render justice. In Turkey, China, and uncivilized countries this principle is modified in the case of foreigners. Submission to the power of a foreign prince in matters of law necessitates a certain community of customs, morals, and institutions, and where, as in the countries mentioned this is not found, special privileges may justly be asked by the nation which would otherwise be put at a disadvantage. The necessity of such privileges was early recognized by Europeans trading with Mohammedan countries, and they were secured in the Ottoman Porte as early as 1535 in the treaty between Francis I and Soliman II.² The rights

¹ Foreign Relations, 1892, p. 413. The State Department when asked to establish a consular court in Ponape (Spanish Islands) refused on the ground that extraterritoriality could not be demanded of a Christian nation.

² See a discussion in Le Revue de Droit International, Vol. 25, M. M. Kebedgy.

then granted to the Franks have since been enlarged and extended to other foreigners.

Rights of jurisdiction within a foreign country are often of a character complex and delicate. There is usually no uniformity in the privileges granted in the various countries. This is shown very well in the treaties and legislation of the United States on the subject. All shades of power have been in force at different times and places, varying from the control merely of disputes between Americans to control of all actions in which a citizen of the United States is a *defendant*. The policy of the United States has been generally to secure the latter standard as the *extent* of the jurisdiction when possible.

The first recognition of the extraterritorial rights of the United States was in the treaties with the Barbary powers. Our relations with these states were very important to us in the latter part of the eighteenth century. "Before the War of Independence one-sixth of our trade in wheat and flour and one-fourth of our dried and pickled fish . . . found its market in the Mediterranean."³ This trade, employing twelve thousand men, was under the protection of British passes.⁴ After the war this protection was lacking, and constant depredations on our trade resulted. Under the treaty of 1778 the French king undertook to protect our trade from depredations by these powers, but did not make the promise good. For some time all attempts to get commercial agreements with them failed by the exorbitant demands for gifts as the price of a treaty. Commercial conventions were finally obtained in the period 1795-1836, which also recognized the right of our consuls to settle disputes between citizens of the United States. The provisions of these treaties are similar:

1. All disputes between citizens of the United States are to be decided by the consul alone.
2. Disputes between citizens of foreign countries are to be settled by the consuls of the nationalities involved.

³ Foreign Relations, 1883, pp. 9-31.

⁴ Lyman, History of the Diplomacy of the United States, p. 339, quoted in "Treaties and Conventions of the United States, 1887.

3. Disputes between citizens of the United States and citizens of one of the States of Barbary are to be settled in the local court, the consul having the right to be present at the trial.⁵

This permission was of little practical value and was looked upon by the government of the states as a merely formal courtesy.

The next important treaty of the United States involving extraterritorial rights was concluded with Turkey. Before 1817 our trade in the Ottoman dominions was under the protection of the English Levant Company. All attempts to get a treaty with the Porte failed till 1830. In that year the convention upon which rest our present rights of jurisdiction in Turkey was concluded. The agreement was attended by confusion even in its negotiation, and is at present the ground of an irreconcilable dispute between the two parties. The fourth article reads as follows: "If disputes should arise between the subjects of the Sublime Porte and citizens of the United States, the parties shall not be heard nor shall judgment be pronounced unless the American dragoman be present. Causes in which the sum may exceed five hundred piastres shall be submitted to the Sublime Porte to be decided according to the laws of equity and justice. Citizens of the United States of America, quietly pursuing their commerce and not being charged or convicted of any crime or offense, shall not be molested, and even when they have committed some offense, shall not be arrested and put in prison by the local authorities, but they shall be tried by their minister or consul and punished according to their offense, following in this respect the usage observed toward other Franks."⁶ This is the American ver-

⁵ Treaties were concluded as follows:

Algiers: September 5, 1795; June 30, 1815. (Abrogated by the Annexation of Algiers to France.)

Tunis: August, 1797, modified 1824. (American State Papers V. Foreign Relations 430.)

Tripoli: June 4, 1805.

Morocco: September 16, 1836.

⁶ Treaty of May 7, 1830, Article IV.

sion. No dispute arose as to the meaning of the treaty until 1868, when the Turkish government claimed jurisdiction over two American citizens arrested for alleged offenses against the government. It was insisted that the Turkish version contained no mention of the extraterritorial rights claimed by the United States. The dispute has continued to this day. The Department of State has repeatedly had translations made from the original Turkish text at Constantinople, with the uniform result that the contentions of the United States as to the wording of the treaty have been sustained. Further, a provision identical to that in the United States treaty is contained in the treaty with Belgium in 1838, and with Portugal still later. The exactness of the translation in these cases has never been questioned by Turkey.⁷

Several cases have arisen under the disputed interpretation, most important among which was the trial and acquittal in 1877 of one Kelly, an American, charged with the murder of a native Turk. In 1855, before the case arose for dispute, Attorney-General Caleb Cushing held that the United States *did* have extraterritorial jurisdiction, as claimed, in Turkey.⁸ Attorney-General Black later stated that the jurisdiction extended only to criminal cases.⁹ Our present rights in the matter have been held by the Supreme Court to be the same as those of other Christian nations.¹⁰ The part of the treaty which is undisputed provides that the American dragoman shall be present at all trials of our citizens. The rights granted to foreigners in general may be thus summarized:

1. Trial in Turkish tribunals in cases in which a native Turk is involved, a representative of the foreign nation being present.
2. Trial in consular courts for disputes with another of the same nationality.

⁷ See Treaties of the United States, 1887, under Ottoman Porte and extraterritoriality.

⁸ Vol. VII, Opinions Attorney-General, 565.

⁹ Vol. IX, Opinions Attorney-General, 294.

¹⁰ Damese vs. Hale, 91 U. S. 13.

3. Trial in the consular court of the defendant of questions between foreigners of different nationalities. In addition there have grown up, independent of treaties or legislative enactments,
4. Mixed tribunals of Turkish magistrates and foreign Christians which have been allowed jurisdiction for cases between Turks and foreign Christians; and mixed courts in place of the separate courts for trials between foreign Christians.

These mixed courts were established under an arrangement concluded with the Porte by the ambassadors of Austria, Great Britain, France and Russia. In them "each nationality may be represented where its citizens are concerned."¹¹ The consuls make out lists of the leading residents or "notables" of their several nationalities, and from these from time to time men are selected for duty in the court.

Thus far the general principle of trying cases involving foreigners in the court of the defendant had failed of recognition in Turkey. In China, however, this right is regularly granted. Our first treaty with China, negotiated in 1844 by Hon. Caleb Cushing,¹² obtained for our citizens the same rights that had been granted to the English in a previous treaty.¹³ Consular jurisdiction was established (1) over all cases between citizens of the United States, and (2) over all cases in which a citizen of the United States was a defendant in a dispute with a native. Up to this time there was no statement of the *extent* of consular jurisdiction, or the manner of its exercise in the different countries except the provisions embraced in the treaties. These were supplemented in 1848¹⁴ by a statute "to carry into effect certain provisions in the treaties between the United States and China and the Ottoman Porte."

The manner of trial was defined, and the laws of the United States, so far as applicable, were to be the rule of the courts, and in case these were insufficient they were to be suppl-

¹¹ Senate Mis. Doc., 47th Con., Ses. I, Doc. 89, May 4, 1882.

¹² Sen. Doc., 28th Con., Ses. II, Doc. 58.

¹³ Cushing to Calhoun, cited VII, Opinions Attorney-General, 497-499.

¹⁴ Statutes at Large, 30th Con., Ses. I, Ch. 150, August 11, 1848.

mented by the provisions of the common law. Should both prove inadequate to the peculiar situation, it was provided that the diplomatic representative of the United States should make, with the advice of the consuls, special rules to supply the defects. These regulations were to have the force of law immediately upon proclamation, but were subject to review by Congress. The State Department has been disposed to construe the permission to make regulations strictly, and to confine it to making out a course¹⁵ of procedure and not to include the creation of new rights and duties. Consuls were by the act given jurisdiction over all cases, civil and criminal, even including capital offenses. In the more serious cases they were to call to their assistance in arriving at a judgment reputable citizens of the United States, not more than four in number, and their decision was subject to review by the minister.¹⁶ The provisions of the act as to *crimes* were extended to Turkey, so far as in conformity with the treaty of 1830.

The power to make regulations was first exercised by Commissioner Davis for China in 1850.^{16a} The conditions under which this first set of rules was made were peculiar. The Commissioner says: "In draughting these regulations and forms, I had to encounter great embarrassment, consequent on my limited knowledge of law and forms . . . I was left solely to my own resources. Nor was I able to find in all China, Hong Kong, Macao or the Philippines, either an American lawyer, or an American law book, with the exception of the Statutes at Large and Kent's Commentaries. . . ." Further, "those who have to administer the law are destitute of all legal acquirements." This latter condition has been general

¹⁵ Sen. Ex. Doc. 25, Ses. III, 41 Con., see also, Sen. Ex. Doc. 20, Ses. III, 40 Con.

¹⁶ See Opinion Attorney-General, Vol. VII, pp. 495 and 565, Vol. IX, p. 294. Amer. State Papers Foreign Affairs, Vol. 2, p. 369.

^{16a} Sen. Ex. Doc., 31st Con., Ses. I, Doc. 72, September 9, 1850. It was originally held that Vice-Consuls could not exercise judicial power. Consular Instructions, 1855, paragraph 275. This opinion was revised by Attorney-General Cushing, Vol. VII, Opinions Attorney-General, 511.

from that time to this. Inspector Peirce reported in 1904 "at the present time none of our consuls in China are trained lawyers."

The regulations made by Commissioner Davis to supplement the statutes and the common law covered appointment of subordinate officers and their powers, new trials, executions, oaths of office, oaths for the various creeds, and other details. Since that time these rules have been increased and modified by our diplomatic officers in China as occasion demanded. Regulations were also issued at a later date for Turkey and for Japan.¹⁷

As new treaties granting extraterritorial rights were obtained

¹⁷ For China :

Sen. Ex. Doc., 32d Con., Ses. I, Doc. 43, March 15, 1852. Concerning seamen in free China ports.

House Ex. Doc., 34th Con., Ses. I, Doc. 32, February 25, 1856. Penalties for enlisting in foreign armies in China.

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House Ex. Doc., 35th Con., Ses. II, Doc. 21, December 27, 1858. Assignment.

Sen. Ex. Doc., 36th Con. Ses. I, Doc. 7, February 6, 1860.

Fees in Consular Courts.

Diplomatic Correspondence, 1865, Vol. II, p. 413. All United States citizens to register at Consulates (a similar regulation in Japan declared by the Attorney-General to be beyond the minister's power in time of peace). Further regulations based on "forms made by United States Consul-General at Constantinople."

Sen. Ex. Doc., 40th Con., Ses. 3, Doc. 34, January 27, 1869. Regulations for American steamers in certain cases.

For Japan :

By Minister DeLong, sent to Congress by President Grant, January 27, 1871.

Foreign Relations, 1874, February 23.

For Turkey :

By Minister Morris, sent to Congress by President Lincoln, January 23, 1863.

by the United States, the limitations of the statutes of 1848 became more apparent. The American community in China also was in urgent need of better protection than was given by the law. Treaties granting the right to settle all disputes between American citizens were obtained from Borneo (June 23, 1850), Siam (May 29, 1856), Persia (December 13, 1856), and Japan (July 29, 1858), and were confirmed in a new treaty with China (June 18, 1858). The right to settle all cases in which a United States citizen was a defendant was also granted by Borneo,¹⁸ Japan, China, and (practically) Siam.

Such cases by the treaty with Persia were to be "discussed and decided according to equity in the presence of an employee of the consul of the United States." In Siam, "any dispute . . . between American citizens and . . . Siamese shall be heard by the consul in conjunction with the proper Siamese officers. The criminal offenses will be punished in the case of American offenders by the consul according to American laws" and conversely. To provide for the carrying out of these laws and to remedy the defects of former legislation,¹⁹ the act of 1860 was passed.²⁰ Equity and admiralty law were extended to supply the gaps in the laws of the United States and the common law, appeals were regulated and various other improvements were made. But the law could not cover the peculiar requirements in the countries in question, and had to be supplemented again by regulations by the ministers.²¹ The

¹⁸ The treaty with Borneo (1850, June 23) provided the most extensive extraterritorial rights ever included in any treaty of the United States. "In all cases where a citizen of the United States shall be accused of any crime . . . the person so accused shall be exclusively tried and adjudged by the American consul . . . and in all cases where disputes or differences may arise between American citizens or between American citizens and the subjects of his Highness, or between American citizens and the subjects of any foreign power, . . . the American consul shall have power to hear and decide the same . . . without molestation of any authority of Borneo."

¹⁹ Extraterritorial rights in Macao had been given up in 1850. Statutes at Large, 31st Con., Ses. II, Ch. 65, September 20, 1850.

²⁰ Statutes at Large, Vol. XII, p. 22, June 22, 1860.

²¹ See former note on ministerial regulations.

act applied without qualification to China, Japan, Siam, and to all other countries "not inhabited by any civilized people or recognized by any treaty with the United States." It applied further:

To Turkey in criminal cases "and also for the exercise of jurisdiction in civil cases wherein the same is permitted by the laws of Turkey, or its usages in its intercourse with the Franks or other foreign Christian nations."

To Persia as regards suits between United States citizens.

To Tripoli, Tunis and Morocco so far as the treaties and custom . . . allow.

This law is the basis of our extra-territorial rights at the present time. In a few years the practice in the various courts in China came to vary in details,²² such as the power of the consuls to cross-examine witnesses, and the relative formal position occupied by the representatives of the two countries during the progress of the trials, but no modification of trial by the officer of the defendant has yet been introduced.²³

The twenty-eighth article of the treaty of 1858 provided that "if controversies arise between citizens of the United States and subjects of China which can not be settled otherwise, the same shall be examined and decided conformably to justice and equity by the public officers of the two nations acting in conjunction." This language seems to provide for the institution of a system of mixed courts but they did not actually develop. In practice, a representative of the consul was usually present at trials in Chinese courts to which a United States citizen was a party, though in some cases even this was looked upon with disfavor. The right to such representation was expressly stipulated by the United States in the new treaty of November 17, 1880. In some consular courts the Chinese litigants have been anxious to dispense with the presence of a native official,

²² For reports on the varying practice in Consular Courts in China, see *Foreign Relations*, 1879, pp. 221-229. Canton, Chin-Kiang, Foo-chow, Hankou, Ningpo, New Chwang, and Shanghai.

²³ For the true condition in the so-called "mixed court" in Shanghai, see *For. Rel.*, 1880, p. 150. The conclusions drawn in Senate Mis. Doc., No. 49, 47th Con., Ses. I, are too broad. The municipal regulations of Shanghai do form an exception.

and in others the native authorities have claimed a right—disallowed by the consul—to have a representative at the trial who should act conjointly with him.

Cases of great importance involving large amounts, of property, and in some instances in criminal offenses, the death²⁴ penalty have been adjudicated in the consular courts. The importance of some of these cases in China and Japan led to the amendment of the powers of the courts in 1870.²⁵ In criminal cases the minister was to allow appeal under certain conditions to the circuit court of California, when the person appealing held "the decision erroneous in point of law." In civil cases in which the matter in dispute was above \$500 and below \$2500, appeal could be had from a consular to the ministerial court. Further, "where the matter exceeds \$2500, appeal shall be allowed" as in criminal cases. In all appeals the California court was to act only on the evidence presented at the former trial. The provisions of the law of 1860 were extended to Madagascar, so far "as the treaty allows," and to any country²⁶ of like character with which the United States may hereafter enter into treaty relations."

²⁴ Foreign Relations, 1864, Part III, p. 392. First death sentence, June 1, 1864. Prisoner committed suicide. Death sentence, June 2, 1864. Prisoner escaped. Death sentence, June 3, 1864. Prisoner executed.

²⁵ Statutes at Large, 41st Con., Ses. II, Ch. 194, July, 1870.

²⁶ Treaties granting extraterritorial rights, but not mentioned in the general discussion, are as follows:

	Jurisdiction over disputes of citizens of the United States.	Jurisdiction in cases in which citizens of the United States are defendants.
Muscat, Sept. 21, 1833.	Yes.	No.
Madagascar, Feb. 14, 1867.	Yes; but Madagascar may banish foreigner for breach of law.	No.
Madagascar, May 13, 1881.	Yes.	Mixed courts—see below.

The provision allowing appeals from consular courts to a court in the United States, though following a similar plan in use in France, did not meet with general approval.²⁷ In 1891 a law was passed providing that "no appellate jurisdiction shall hereafter be exercised or allowed by the said existing circuit courts."²⁸ Though this did away with an inconvenient and expensive right of appeal, it introduced a peculiar anomaly which has remained a part of our law up to the present time. As has been shown, the law of 1870 provided that in civil cases involving amounts ranging from \$500 to \$2500 the appeal was to the minister; in cases involving a greater amount, to the California court. The law of 1891 took away the latter appeal

	Jurisdiction over disputes of citizens of the United States.	Jurisdiction in cases in which citizens of the United States are defendants.
Samoa, Jan. 17, 1878.	Yes.	Officers to act "in conjunction"; law of defendant to prevail.
Corea, May 22, 1882.	Yes.	Trial by officer of defendant; officer of nationality of the plaintiff may cross-examine.
Zanzibar, July 31, 1886.	Yes.	All rights of most favored nation.
Tonga, Oct. 2, 1886.	Yes.	Trial by officer of nationality of defendant except that in offenses against customs, taxation, citizens of the U. S. are amenable to Tongan courts. Also as to police and health regulations.

The Madagascar treaty of 1881 provides for the establishment of a system of inferior and superior mixed courts, in which the deciding voice is to be with the officer of the defendant. *The rules for such courts* to be drawn up by the diplomatic officer of the United States and an officer of Madagascar. The Consular Regulations (Washington, 1896) now enumerate the following countries in the list of the places where the United States exercises extraterritorial powers: China, Siam, Madagascar, Turkey, Persia, Barbary States (Tripoli, Tunis, Morocco), Maskat.

²⁷ For the opinion of Inspector Keim, see his report, *supra*.

²⁸ Statutes at Large, 51st Con., Ses. II, Ch. 5, March 3, 1891.

but provided for nothing in its place. We thus have the peculiar situation of a consular court from the decisions of which, in comparatively unimportant cases, there *is* appeal, while this same court, presided over by a man generally without legal training, is the supreme judiciary for the more important cases. As a whole, our administration of justice in our consular courts lacks that definiteness which should be a characteristic of all law proceedings. Besides the dispute as to jurisdiction in all the Ottoman dominions, the system administered in China has important omissions which are neither covered by the common law nor by the regulations made by the ministers. For example, common law debtors are liable to arrest and imprisonment. There is no provision modifying the rule, as has been established in all our states by statute, either in the laws of the United States or in the principles of equity. Again, in none of our consular regulations is there a provision for a "statute of limitations."

Remedies which have been proposed to do away with these defects are (1) the creation of a system of mixed courts, and (2) the establishment in the Orient of a United States Circuit Court to deal exclusively with cases arising there. The former method was considered by our minister to China in 1879-80, but the plan did not receive the unqualified support of the consuls and was dropped.²⁹ Under different circumstances a similar plan has, as we have seen, grown up extra-legally in the Ottoman Empire. In 1876³⁰ the United States, in conjunction with the European powers, adopted a system of mixed courts for Egypt.³¹ This was authorized for the United States by a joint resolution³⁰ in Congress giving the President the authority to suspend our rights of jurisdiction in favor of the mixed court, so far as it covered the same ground. The latter plan, to establish a Circuit Court in China, was strongly ap-

²⁹ See Foreign Relations, 1879-1880, p. 221 et seq.

³⁰ See Statutes at Large, Vol. 18, p. 23, March 23, 1874, and Vol. 19, p. 662.

³¹ Foreign Relations, 1866, II, 269. Egyptian Government allowed the right of banishment by the diplomatic representatives of the various powers.

proved by Inspector Peirce in his report in 1904. The court would have appellate jurisdiction over all cases, civil and criminal, and would adopt, to supplement the Federal Statutes, the laws of the District of Columbia, with the exception that the jury would consist of five men only.

There remains to be noticed the surrender of extraterritorial jurisdiction in Japan, which took effect in 1899.³² As early as 1873 Japan took steps toward this end in negotiations with Italy. The opinions of the powers were asked on the matter by the Italian government, and Secretary of State Hamilton Fish wrote on the part of the United States: "The President is forced to the conclusion that it is not yet safe to surrender to the local authorities the guaranteed rights of ex-territoriality."³³ In this opinion Germany, Great Britain and the Netherlands declared their agreement, and the subject was dropped. The question was finally settled so far as affects the United States by the treaty concluded November 22, 1894, which provided³⁴ that the jurisdiction of our consular courts in Japan should cease on July 17, 1899.

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³² Treaty of November 22, 1894.

³³ Foreign Relations, 1873, June 21.

³⁴ Consular Regulations, 1896, p. 262. A request that the United States surrender her extraterritorial rights in Tunis was made by the French Government, November 20, 1882, "in view of the organization of French courts in the regency." A joint resolution authorizing such surrender passed the house. Foreign Relations, 1883, p. 483 et seq.

CHAPTER IV.

CONSULAR ASSISTANCE TO FOREIGN TRADE OF THE UNITED STATES.

The character of the consul as an envoy of trade never assumed importance until a little over half a century ago. Following the example of France and England, our representatives abroad at that time were encouraged to report on affairs of a commercial nature, but even then no systematic effort was made to make these returns of use to commerce. The possibility of using the consuls for this purpose only gradually impressed itself upon the minds of our statesmen. Compared to our rapidly expanding internal trade, the importance of our foreign commerce was so slight that the oversight at that time is not to be wondered at. Indeed almost up to the present our domestic commerce has formed so overwhelming a part of the total that we have been largely content to let the extension of our foreign trade take care of itself. Only in time of local depression of prices have we turned to foreign markets for an outlet for the goods that unusual conditions had rendered unsalable at home. A large number of our representative manufacturers even to-day pay no attention to foreign trade.

Until recently there has been no consistent effort on the part of our manufacturers to compete in the markets of the world for a share in foreign trade. Numerous instances are reported where a demand for goods, established in a time of domestic depression of prices, has been entirely neglected as soon as the home market recovered. In other cases, trial orders by foreign merchants have been either refused altogether or unreasonably delayed "on account of the press of home trade." In addition to the fact that our manufactured goods have been comparatively unimportant in foreign trade, the field of consular activity has been limited by the character of the goods exported. Until twenty years ago six-sevenths of

our exports were agricultural products¹ and raw materials,—classes of goods which practically compelled their own market. Indeed, this still remains the character of over two-thirds of our export trade, the chief articles of which are at present cotton (raw), breadstuffs, provisions and iron products. It is clear that with this character of goods exported, combined with the indifference of manufacturers to foreign trade, the results obtainable through consular effort for extension must be limited.

Effort of the Government to Make the Consular System of Value in Trade. In the early days of our history, as we have seen, the consular duties were thought of as extending only incidentally, if at all, to the protection and extension of our trade with foreign nations. Protection of our *commerce* and protection of our citizens abroad in their private rights were considered the chief ways in which service could be rendered. The government soon found, however, that the consular corps could be used for collecting information otherwise unobtainable. At first the statistics gathered were for the use of the various departments of the government, and did not bear directly on trade. The divisions profiting most by these communications were the Treasury Department and—at first through it, and later independently—the Department of Agriculture.² These two departments especially have continued to rely on the consuls for collecting information abroad, and a large number of the reports now received are turned over directly to them.

The first extension of the sphere of consular activity was made early. In 1801 the consuls in the West Indies were re-

¹ Exports of Domestic Merchandize, U. S. Statistical Abstract, 1903.

	Raw and Agricultural Products per cent.	Manufactured Pro- ducts per cent.
1860	87.24	12.76
1880	87.52	12.48
1900	68.35	31.65
1903	70.72	29.28

² From the Files of Instructions to Consuls in the Dept. of State, Washington (MS.).

quired to issue certificates of health "as often as may be necessary." The districts from which these reports are to be issued have been steadily widened, and extend at present to most of the consular ports. In the same year³ an attempt was made to have consuls report semi-annually the amount of American trade at the various ports. It was also desired that consuls should, when possible, report the character of the cargoes; but a further instruction warned that they were not to *demand* this information, as the requirement rested only on departmental order and not on law.⁴ Such a rule was practically inoperative, because, since the law was lacking, there was neither pressure on the masters to give a list of cargo, nor pressure upon the consuls to make the reports. Further, the consuls at this time were chiefly men in business to whom the duties of the office were only incidental to their commercial interests. The tables actually reported were rendered valueless because of the numerous duplications they contained⁵ by reason of the ships stopping at several ports en route.

In 1838 Secretary of State Forsyth favored the requirement of reports of a distinctly commercial character,⁶ and Secretary Buchanan in 1846 entertained "not a doubt that a mass of information might be procured through the agency of a properly constituted consular system which would be of great advantage to the navigating, commercial, agricultural and manufacturing interests of the country."⁷ These suggestions, however, were not followed out, and even formal yearly reports were not required by law until a decade later.

Consular Reports Before August 18, 1856. The chief use of the consuls in the collection of statistics before 1856 was in the compilation of three digests of the commercial regulations in foreign ports, and in a series of reports issued by the Sec-

³ Papers relating to Consular System and Circulars, Dept. of State, Washington, 1801 (MS.).

⁴ *Ibid.*, July, 1801.

⁵ Department Circular. June 9, 1830. Papers Relating to Consular System and Circulars (MS.).

⁶ Sen. Doc., 25th Con., Ses. II, Vol. II, Doc. 467, 1837-1838.

⁷ House Doc., 29th Con., Ses. II, Doc. 12, December 15, 1846.

retary of State in response to resolutions of Congress, and later an act of August 16, 1842.⁸ These reports treated the commercial relations of the United States with foreign countries. Though the returns⁹ were of some use to our foreign commerce, the controlling motive which led to their publication was to get prices to aid the customs office in levying duties, and to obtain information by which to shape legislation.

The first series mentioned referred exclusively to regulations on commerce and need not be discussed further here.¹⁰ The second series, however, developed into what has become one of the regular commercial publications of the government. In the beginning these reports were not at all connected with the consular service, but were compiled in the department from reports of the customs office and foreign official publications. The first of the documents of this nature which makes a recognized use of the reports of our representatives abroad¹¹ was published under Secretary of State Daniel Webster in 1842. "Circulars were written to the American consuls in the principal commercial nations" and "their tariffs obtained"; but the great bulk of the work was still compiled from foreign and domestic statistical publications, and the text of the consular

⁸ House Doc., 27th Con., Ses. III, Vol. II, Doc. 29, December 27, 1842.

⁹ See Introduction to Commercial Relations, 1854.

¹⁰ They were published as follows:

"Commercial Digest" sent to the Senate by President Monroe, December 17, 1819, by resolution of March 3, 1817.

"Digest of Commercial Regulations" showing changes subsequent to 1819. Prepared under Secretary Adams, sent to the House, January 30, 1824, in accordance with House Resolution, January 21, 1823.

"Digest of Commercial Regulations," three volumes compiled under the Secretary of the *Treasury* by resolution of the House, March 3, 1831, completed 1833-1836. In the last two works it was not required specifically that "the privileges and restrictions of the commercial intercourse . . . of the U. S. with foreign nations" should be reported.

¹¹ The preceding publications were: Senate Doc., December 16, 1793. Reported by Secretary Jefferson, equivalent to 8 or 10 octavo pages. Sen. Doc., 26th Con., Vol. III, Doc. 80. Reported by Secretary Forsyth, 74 pages. It covered the "nature and extent of the privileges and restrictions of the Commercial Intercourse of the United States." Neither document mentions consular reports.

returns is not given.¹² By an act of August 16, 1842, the reports were required to be made yearly, and in accordance with the law similar publications were sent to Congress, 1842-1844.¹³ They were then discontinued to be taken up on an elaborate scale in response to a resolution of the House, December 14, 1853. The report of four large volumes was submitted March 4, 1856.¹⁴ One volume of the report reproduces for the first time the text of the consular returns. The other volumes, however, are still a compilation of statistics drawn from other sources as well as from the consular reports. A similar report was authorized the following year.¹⁵

The object of these investigations is brought out in the circulars sent to the consuls relative to the facts desired. Secretary Forsyth wrote in 1838: "The department will be glad to receive at all times from any of the consuls . . . any information . . . relating to the commercial policy of the country in which they are, . . . the nature and extent of its trade with other countries, and such suggestions as . . . may enable them to . . . 'benefit or extend' the commerce of the United States." Information is especially requested on "duties, excise tonnage dues, navigation acts, treaties of commerce, coins, currency, weights, boards of trade, and prices of American productions and of similar articles from other countries and the quantities of each imported."¹⁶

Acting Secretary Hodge in 1851 wrote the consuls that, "To protect the revenue . . . from fraud" the department was "desirous to receive information on cost charges, circumstances attending purchase and shipment of foreign merchandise . . .

¹² House Doc., 27th Con., Ses. II, Vol. III, Doc. 163, March 31, 1842.

¹³ House Doc., 27th Con., Ses. III, Vol. II, Doc. 29, December 27, 1842. Sen. Doc., 28th Con. Ses. I, Vol. V, Doc. 339, December 18, 1843. Sen. Doc., 28th Con., Ses. II, Vol. VII, Doc. 135, December 31, 1844.

¹⁴ S. Doc., 34th Con., Ses. I, Vol. XIX, March 4, 1856, by resolution of 1853.

¹⁵ House Doc., 34th Con., Ses. I, Vol. X, Parts 1 to 4, by resolution of 1854.

¹⁶ Department Circular, May 2, 1838. "Circulars 1836-1858," Dept. of State.

to assist in levying duties," and again, price-lists of all foreign products are requested "for the purpose of levying the duties." These quotations serve to indicate that the object of finding new markets was as yet only incidental to the service to be rendered the customs officers. The amount of trade information which came in these reports and the example of England and France, in which latter country a series of monthly commercial reports¹⁷ had been published since 1843, gradually forced upon the department a realization of the aid consuls could give in extending American trade. So thorough had the French publications proven, that they were found "invaluable for consultation in preparation" of our own reports.¹⁸

In 1853 the first general circular requesting information of a definitely commercial character was sent to the consuls. It stated,¹⁹ "In all that relates to scientific discoveries, to progress in the arts, to agricultural development . . . consuls are requested to communicate freely and frequently with this department. It is in contemplation to propose to Congress . . . to publish annually for the public eye . . . extracts from the consular despatches." Later in the same year²⁰ information was requested on certain subjects "to enable the government" to maintain "friendly relations" and to extend and increase "commercial intercourse, and that the people of both (countries) may avail themselves of the mechanical and other improvements of either." The following year, "regular files of price current sheets and such further information valuable to the commerce and navigation of the United States" were requested.²¹ In 1856 the editor of the *Commercial Relations* asserted, "The value of well considered and carefully prepared returns on commercial subjects cannot be estimated too highly. In no manner can a consular corps render better service to the country." Realization of this fact led to the

¹⁷ See Introduction to *Commercial Relations*, 1854.

¹⁸ *Ibid.*

¹⁹ Department Circular, June 1, 1853. Circulars 1836-58.

²⁰ *Ibid.*, October 8, 1853.

²¹ *Ibid.*, March 15, 1854.

section of the law of 1856 providing for the annual publication of the commercial reports of the consuls.

Consular Reports Since 1856.

1. *Commercial Relations.* The annual publication of the Commercial Relations has continued regularly since that time, though the character of their contents has been greatly changed. In the years following 1856 the material was still partly drawn from other sources, but gradually the consular reports absorbed all the space, and in 1869 the inner title was changed from "Abstracts from Consular Returns and of Official Publications" to "Commercial Relations." From that time on the entire volume is taken up with consular reports alone. The character of the reports in the period 1856-70 leaves much to be desired. The field was large and the method of collecting and arranging data varied with the ideas of each consul making a report. Consequently, they do not cover the same ground, and are without common method.²²

An attempt was made in 1871 to bring some uniformity into the reports, and blanks indicating the character of information wanted were sent with instructions that the consul was to add anything further which he might deem useful. An improvement was at once effected. The general ground covered may be summarized as a description of existing conditions in business, exports and imports, and improvement in transportation facilities. Only occasionally are openings for American trade pointed out, and very seldom are suggestions made as to the peculiar requirements of the local markets. In 1874 the Consular Regulations re-defined the character of the commercial reports to be sent. Greater emphasis is hereafter placed upon the *trade with the United States*, rather than total trade, and suggestions for improving it are solicited. This latter factor has become increasingly important in the returns. The change which has taken place in them is similar to that in the monthly consular reports. It has been especially marked

²² See Senate Report 154, 40th Con., Ses. II, July 2, 1868.

since about 1895. At present the material of the annual reports is of the same character as in those sent monthly, except that a more comprehensive view is given of the commerce of the district. Conspicuous among the subjects treated are methods of packing goods, their superiorities and defects, the demands of local usage, and suggestions for the improvement and extension of our foreign trade relations.

It is evident from this summary of the present character of the annual reports that their *object* has been entirely changed, though the name has remained unaltered. Originally they were instituted for the protection of the customs and only incidentally for the extension of trade. To-day trade conditions abroad are the special study, and little, if any, aid is received from them for the levying of tariffs. This latter service, as will be shown later, has passed to a separate branch of the consular duties.

Monthly Consular Reports. In the recovery of business after the Civil War, the desirability of increasing our foreign trade began to impress itself upon Congress, and our annual commercial reports of the time were criticized as "disclosures rather of posthumous than of actual commercial relations." A Joint Select Committee reported that, "It may be necessary in the future, if we would entirely overcome the evil, to publish consular commercial reports at the time they are received in an official gazette to be issued under the auspices of the State Department, and to be accessible without delay to merchants and manufacturers."²³ Further, the depression of prices at home in the seventies caused the department and our business interests to look abroad for possibilities of new markets, and in July, 1877,²⁴ a circular was issued to consuls in Central and South America pointing out that the "Countries of America should cultivate commercial relations between each other to a greater extent. The present stagnation of prices in the United States favors such a trade . . . it is the desire of the

²³ Senate Report, 40th Con., Ses. II, Doc. 154, July 2, 1868.

²⁴ Department Circular, July, 1877. "Circulars to Consuls, 1871-1881, Dept. of State, Washington.

department that . . . diplomatic and consular officers should devote attention to the question of methods by which trade with the United States can be most judiciously fostered." Consuls "should inform the department on the kinds of manufactured articles now used in 'their districts,' their nature and prices, and whether the United States can supply them; also as to the products of their districts in which the trade of the United States could be increased." In August of the same year a similar circular was issued to the consuls in Europe.²⁵

The response to these requests was satisfactory and the department announced in 1879,²⁶ "The activity of the consular service during the past three years in the transmission of commercial information of practical interest has been of great assistance to our people, and has not only called forth their approbation but has tended to raise the consular service in general estimation and good will."

The next year came the first direct request from the manufacturing interests for aid from the consuls.²⁷ The cotton manufacturers asked the government to secure through the consuls information on the market for cotton products abroad. The advisability of publishing frequently the commercial reports of the consuls was now fully before the attention of the department,²⁸ and Congress "in response to the wishes of the leading commercial communities . . . as expressed through the chambers of commerce of the principal cities which attested the great value of . . . (the) reports," provided for "their more frequent publication and distribution."²⁹ In the instructions to consuls following, we find, "Heretofore with the exception of short abstracts given from time to time to the press, the only means of giving publicity to your reports was through the annual volume of Commercial Relations." The government having provided for a monthly publication, "you are

²⁵ Dept. Circular, August, 1877, *ibid.*

²⁶ Dept. Circular, November 25, 1879, *ibid.*

²⁷ Dept. Circular, March 19, 1880, *ibid.*

²⁸ Introduction to Vol. I, Consular Reports, 1880.

²⁹ Dept. Circular to Consuls, July 1, 1880, "Circulars to Consuls 1871-1881."

therefore requested to prepare reports on all subjects which may be calculated to advance the commercial and industrial interest of the United States. The information should be explicit and comprehensive, so that our merchants, manufacturers, agriculturists, exporters and importers shall fully understand the peculiarities, wants and requirements of the several markets, as well as the best methods of reaching the same." Before this time "the department saw no profitable object in demanding, nor had our consuls any incentive in preparing and forwarding thither, any reports outside those required for the annual volume, there being no provisions . . . for their publication."³⁰ The first number of this monthly series was for October, 1880, and the series has become a permanent part of our commercial publications.

Special Consular Reports. The use of the consuls in collecting statistics on special subjects has grown. Most of these inquiries are on questions connected with commerce, though many have an entirely independent character. At first these special reports were published in the monthly series, but later a separate publication was started, the first volume of which appeared in 1890.

Declared Exports. Another class of reports, which has been separated from the regular series, is the publication called "Declared Exports," a summary of the commerce declared for the United States in foreign ports.

Advance Sheets (Daily Consular Reports). In 1898³¹ "the United States made a departure in commercial publications which placed it in this respect in advance of all other countries. This was in the provision for the daily publication of those reports from the consuls which would be of immediate value to trade."³² These reports are of the same character as the monthly communications; indeed, they largely form the

³⁰ Introduction to Volume I, Consular Reports.

³¹ Executive order, January 1, 1898.

³² Consular Report, 1893, states that at that time it was already customary to print 400 or 500 of "advance sheets" of reports of immediate interest and distribute them to suitable newspapers and trade journals.

basis of them. Like them also, they are distributed free to chambers of commerce and firms interested in foreign trade.³³ In case of foreign decrees which may seriously affect the sale of articles already about to be shipped, our representatives use cablegrams to prevent the merchants from shipping at a loss.³⁴

General Criticism of the Commercial Reports. The departure made in 1880 was the first consistent effort to develop the American trade through our consuls abroad. Even with this attempt there was much ill-guided energy. The early years of our monthly consular reports furnish numerous examples of literature bearing not in the slightest degree upon American commerce. As examples, these may be cited: Descriptions of a trip through the Servian mountains, of a Japanese Feast of Lanterns, and a detailed account of the royal cremation ceremonies in Siam. Another criticism on the reports is that they do not reflect evenly the commercial opportunities of the different districts, for it is a regrettable fact that but a small portion of the consuls contribute the valuable reports even at the present time, and much of the information, though relating to trade, lacks the definiteness which would make it of service in our foreign commerce. In some cases, indeed, consuls have not only failed to report actual trade conditions, but have described trade opportunities and business facilities non-existent to the ordinary observer.

A comparison of the reports of different years, however, can not fail to impress the fact that there has gradually grown up a greater definiteness of field and exactness in detail, especially in the last decade. This has come about through better editing in the department, through more efficient direction, through improvement in the general character of the representatives, and through a better acquaintance on the part of the consuls with the field to be covered. On this latter point, however, it must be remembered that the frequent changes made every four years largely destroy any profit from experience.

³³ See Dept. Circular, December 7, 1897.

³⁴ The chief instances have been in relation to American meats and fruits.

Character of the Reports. In considering the character of the reports sent by the consuls, we will not study the various communications sent voluntarily or by request to the Agricultural Department, the Marine Hospital, and other divisions of the government. The discussion will be confined to those reports alone which deal with the advancement of American trade abroad.

Reports on Foreign Trade Restrictions.

1. *Foreign Customs Regulations and Tariffs.* Customs regulations are subject to frequent changes, especially in Spanish America, and as a formal compliance with them is rigidly insisted upon, the importer of foreign goods is often subjected to exasperating exactions and delays. Exact compliance with these changing rules is often very difficult, but must be accomplished if trade with the country in question is not to be crushed. The consular reports, especially in the last decade, have contained numerous references to the newly established requirements with the object of removing the chance of conflict with the foreign authorities. The importance of filling orders with exactness has been repeatedly pointed out, a slight deviation in width or failure to state the character of goods often subjecting the importer to fines, delays and higher duties. The frequent difficulties which arise are typified by a dispute which arose in a Brazilian customs house over a case of "stamped ware" (iron) which was listed by the customs authorities as "prints" with customs charged by *weight*. Such difficulties are not confined to the Latin-American countries, however, as it is a caution constantly reiterated that in sending products with metal parts to Germany or Russia, for example, the different metals should be packed separately, as otherwise the tariff charge will be at the rate for the highest class article in the package. Under these rulings, heavy engines have been listed as "manufactured nickel ware," and lamps as "gilded brass fixtures." Besides these formal difficulties, the changes in tariff schedules are reported by the consuls to enable the home exporter to calculate upon the margin of profit.

2. *Foreign Food Laws.* Regulations concerning the preparation of food products for the foreign market are contained in almost every issue of the reports at present. The reasons for the requirements made are generally given as the protection of health, though in most cases the prompting influence is the agrarian interest of the home country and the general fear of American competition. Most important of these laws are the ones restricting the importation of American meats and fruits. The extent of the restrictions in the various countries has been reported by our foreign representatives who have also taken the lead—with partial success—in working for the relaxation and abolition of the discriminations. Many of the rules in relation to food products, the necessity of conforming to which consuls have pointed out, are formal regulations, the violation of which it is admitted could have no effect upon the public health. Such is the objection by the Paris police to hams wrapped in canvas treated with chlorate of lead, and the regulations requiring canned goods to be sealed with solder of pure tin only; also the German law prohibiting the importation of apples dried on zinc frames and apricots treated with certain acids.

3. *Patent Laws.* In trade with foreign countries, our American manufacturers have suffered much through the imitation and subsequent sale abroad, chiefly in Germany, England, France and Belgium, of American patented articles. In many cases a promising trade has suddenly ceased on account of the copying of the American article, generally in an inferior grade. The necessity of international protection of patents has been again and again pointed out, and the rules for obtaining patents abroad reported by the consuls. Not only have the foreign imitations in certain cases driven out the American machines in the market of the country of manufacture, but the foreign trade in other countries has been seriously cut into. Such was the experience of the American trade in sewing machines in Brazil, and a large number of other articles not patented in Germany have attained a wide sale, both in Europe and Spanish America. In addition to pointing out the necessity of obtain-

ing patents abroad, valuable service has been rendered in the protection of American trademarks and patents when in fact registered abroad. Instances could be cited in great number, but perhaps the most numerous in respect to any single article are the reports of the protection afforded to the trademark of Standard Oil—long one of the most important of our direct exports to many of the countries of the near and far east. The re-use of cans and barrels by local merchants, and the counterfeiting of the trademarks upon new packages, is a practice hard to overcome entirely. At various places a trade of some size has sprung up through selling inferior native oil in this way. In important districts the consular protests to the local officers have “checked the abuse greatly,” as is testified by the agent of the Standard Oil Company.³⁵

Reports on Demands of the Local Markets. The differences in the character of trade in the various portions of the world is perhaps emphasized by no other single feature so much as by the demands of local custom. Long established usage so ingrains itself into the life of a people that the dealer in manufactured articles must flatter the established prejudice or yield to others who are willing to do so. Perhaps no other essential to the development of trade so often finds mention in the consular reports. Our American exporters apparently find it very difficult to adjust themselves to the entirely new demand of the market and methods of making sales and payments.

1. *Local Styles and Prejudices.* The tyranny of local preference often leads to demands which, to those unacquainted with the country, seem absolutely groundless. A reputation for excellence, once established, is nowhere a more valuable asset than in some of the backward countries. A remarkable example of this fact is the great favor won by the Collins machete famous throughout all Central and South America and the Caribbean. Where the native is once accustomed to a certain brand, he is with great difficulty persuaded to adopt a

³⁵ Statement of Standard Oil Agent at Shanghai, and also reported in Smyrna; Patras, Greece; Austria; Hungary; China and Corea. Consular Reports passim.

new one, no matter what its qualities. The same conservatism is not, however, lacking among civilized peoples as well.

The best way to illustrate the aid consuls may give in guiding as to local prejudice those about to engage in foreign trade is by examples from actual trade dealings.³⁶ One of the chief articles of import into the East and South America is cotton. The trade presents in no two parts of the world exactly the same characteristics. A general criticism of the American textile trade is that the manufacturers do not give enough variety in small orders and do not cater to the foreign trade by cutting the conventional lengths demanded, or weave exactly to the specifications for widths. The native once accustomed to buying goods in a set piece of a certain length is with difficulty persuaded to accept a cut of the same length from a longer bale. For example, the trade in Sierra Leone demands goods cut in twelve or twenty yard pieces; in Venezuela, thirty yards long and twenty-three inches wide; in Nicaragua, nine or ten yards; in Hayti, twelve and one-half or twenty-five yards long and twenty-three or twenty-seven inches wide, the latter in order to escape increased customs duties on wider goods, while in Peru,—where duties are on the linear yard—the cloth should be one metre wide. The consular reports repeatedly mention requirements of this sort, “further, the trade marks should also conform to the native taste.” In India a rampant leopard is popular; in China dragon figures; in Uruguay marks of a religious character, like the star of Bethlehem, and in Sierra Leone certain vines, trees and animals formerly worshiped by the natives and still held in great respect. In some countries the mark “should cover the whole front . . . be in glaring colors and the package should have a ribbon around it.”

In most of the countries of the East and South America the goods should be heavily sized with clay to give them body;

³⁶ The following examples are taken from the consular reports of various years, and it is not claimed that all the conditions of trade named are of necessity in existence to-day; but each represents the condition at the time the report was sent—which serves the purpose of the illustration.

but in Venezuela lightness is desired, as the duties are upon superficial weight. In almost no cases are the patterns demanded alike. In China and Japan, distinctive native patterns must be sent—the greatest success having been obtained by the English, who, obtaining specimens of old Japanese art, copied them upon their fabrics, and thus created new Japanese styles. In Columbia there is no sale for quiet patterns, and bright purple is the favorite color, as is also the case in Venezuela where fancy prints on a white ground have a large sale. In Hayti mauve is the popular color; in Singapore fast Turkey red and checked goods and the dye is as important as the cloth; in Samoa “the gaudier the patterns the more in demand.” In a word, in the East and South America generally the demand is for the class of goods known as “Birmingham wares,” “cheap and flashy.” Similar lists of requirements could be gleaned from the returns for all the important items of export. A few illustrations will serve to indicate other unlooked-for peculiarities. No efforts have ever been successful in introducing the rocking chair into general use in France; powder for Sierra Leone must be in handsomely varnished kegs holding four pounds, for that size sells for as much as can be gotten for a five pound size; flint-lock banded muskets are still in demand (1898), and loud ticking clocks have a large sale as the natives like the sound. Beds sent to Singapore, Formosa and countries of a similar climate must have posts seven feet high connected with rods upon the frame of which a protection of mosquito net may be hung. Washtubs find no market in Singapore, as the natives wash clothes in mid-stream, and pine buckets are useless as they are eaten up by ants. Watches intended for the Chinese trade should be showily plated and put up in Morocco cases, and receive popular favor if made to run from right to left. Similar examples could be cited almost without end, but one farther instance will be given to show that the popularity of the old, though inferior styles, is not confined to backward nations. This is illustrated in the difficulty encountered in introducing the “perfect” American axe. For a long time it failed to win its way at all, not only

in Central and South America, where efforts were made to supplant the old European form, but the peasant classes of Germany and Switzerland clung to the old thick-bladed, straight-handled tool of their forefathers.

2. *Reports of Shortage of Crops.* Reports of occasional shortage of crops in foreign countries, opening up unusual opportunities for profitable export trade are frequent in our consular returns. In some instances, as in the apple trade in several countries in Europe, the shipping once started has continued in after years as a regular branch of export. In most cases, however, the deficiency reported has been temporary only. A class of reports, likewise of a temporary demand, are those pointing out large government contracts, or purchases of a semi-public character, for which bids are to be received. Examples of such openings are the two recently reported by a consul in South America, involving the purchase of large quantities of coal and ammunition. In both cases the contracts were taken by American firms.

3. *Reports on the Mechanical Difficulties of Trade.* Consular reports, especially from the undeveloped countries, constantly point out the difficulties attending commerce which must be carried on through European banking houses, necessitating a high rate of exchange. The increase in cost of shipping which arises from the lack of direct steam communication is also pointed out as a hindrance. What influence these reports may have had in leading to the establishment of improved facilities is of course not obtainable in general. In two instances, however, the establishment of improved steam service has been brought about through the efforts of our consular agents. The direct communication established between the United States and Turkey was the outcome of the persistent efforts of our consul in that country.³⁷ The following quotation from a letter of the Financial Securities Corporation of Philadelphia to the Bureau of Foreign Commerce describes another instance.³⁸ "It may

³⁷ Consular Reports and interview with Mr. W. J. Carr of the Consular Bureau.

³⁸ Quoted in Consular Reports.

be gratifying to you to know that the daily reports which you have sent to us have induced us to charter a fine new vessel which we are now loading to send goods abroad, developing an entirely new trade for the United States." Besides encouraging the extension of our foreign trade communications by pointing out needs of this sort, the consuls have been diligent in reporting harbor improvements and the extension abroad of railroad facilities or other means of transportation opening up new districts to commerce.

4. *Reports Concerning Foreign Business Methods.* Almost as varied as the requirements of the market are the methods which must be observed in carrying on trade in the different countries.

(1) *Credits.* The system of doing business on the basis of long credits has never become popular in America, and our merchants with difficulty adapt themselves to the strange standard. Compliance with custom in this respect is essential in all South American trade, in the bulk of which the same economic arrangements exist as in our own Southern states. In the continental countries long practice will not yield to a basis of cash payments. Besides furnishing information as to the local practice of granting of credits and the procedure in the collecting of debts, consuls are useful in putting the intending exporter in touch with the local business houses and advising as to their accepted commercial rating. This latter function, however, is performed entirely unofficially and at the discretion of the consul, and is not considered, as in Austria, a matter in which the aid of the consuls may be claimed.

(2) *Packing.* In describing the method of packing goods for export the consul is able to furnish valuable assistance to the merchant starting on foreign trade. A multitude of things must be considered which the seeker for a new market can not be expected to know. Goods which travel for months in the hold of vessels must be securely protected against mold and rust by lining the boxes with tin and varnishing the bright metal parts. Markings and invoices must be in the local language, meats for hot climates must be especially packed, furniture must be sent knocked down to avoid the increase of

freight charges on bulky goods. Prices should be quoted for the goods delivered at the seaboard, and the number of cubic feet required should be stated. The requirements for packing can best be realized when taken in connection with the local methods of transportation. American flour has often been shipped to South America and Africa with but two hoops—too weak to keep out moisture and allow rolling. Adequate protection requires twenty hoops, as is the French method. American boilers have been sent for an interior point of Venezuela all set up, while the only means of transportation is on the backs of mules. Goods for Persia must be packed conveniently for camel loads, and in China man-carriage is the general conveyance—a package being attached to each end of a bamboo pole. These instances serve to show the importance of knowledge of the special market conditions, with which, of course, the resident consul is in much closer touch than the home merchant.

(3) *Means of Sale.* The consular reports are full of instances of companies which have attempted to reach the foreign trade at once without finding out the best methods of procedure. Again and again expenditures for the distribution of circulars and catalogues are reported though the advertisement was in a language which the local merchant could not in the least understand. Often when any other language than English has been adopted, it has been Spanish, which, of course, is no improvement in Brazil or Germany where large numbers of the publications were sent. Another laudable attempt by a New York association of merchants was to publish catalogues in Russian and thus reach the Russian market, but the entire edition was seized at the Russian border because the permission of the Russian press censor had not been obtained for entry. Catalogues, it has been repeatedly pointed out by consuls, can in no case take the place of branch houses and traveling agents who know the language and the customs of the country. The latter requirement is often as important as the former, for especially in Spanish America our business methods must fail, for the agent must combine the ability to meet the merchant

on a business basis with social qualities, deference, and patience, which will often allow the spending of several days before the final conclusion of an order. On such subjects as these, as to the best time of the year for carrying on business, the cost of opening relations, and general restrictions upon traveling salesmen, large numbers of reports have been submitted at the request of various trade organizations.

Many of our consuls have offered to give their personal supervision to exhibitions of samples of American manufactures, the bare cost of maintenance of the establishment being borne by the exporters interested. In the majority of cases, however, our exporters have not availed themselves of the proffered aid, though instances of the successful establishment of such exhibitions are to be noticed at Antigua, Turin and Caracas. In other cases private exhibitions by associations of manufacturers have been established through consular efforts, notably at Constantinople (1899). It is very evident that certain of the methods in which it has been pointed out that consuls are able to advance trade are applicable only in facilitating the beginning of foreign commerce by the various companies. Such are the reports concerning local styles, customs of credit, packing and methods of sale. Once a company has an established trade in a country, the consular service can render but little aid in these particulars, for of course those acquainted with all the details of a trade in a certain locality are in a better position to judge concerning them than any system of consuls ever could be.

In giving information of this character to companies not already engaged in foreign trade, however, reports of this nature continue to be of value, as they do also to companies already engaged in foreign commerce, by pointing out new districts to which extension may profitably be made. In another class of reports, moreover, constant aid may be given even to companies with well established connection. Information concerning food laws restricting import to foreign countries may often save loss by shipments of goods which upon arrival would be denied entry. The protection of patents, and aid in

the prosecution of those violating the rights granted under them are branches in which the consuls perform important aid—in prevention even more than in cure of the evils. Reports of the opening of new trade routes, occasional shortage of crops and bids for contracts are also subjects which do not come to the notice of merchants in the ordinary course of trade.

Aid to Trade Through Protection of the Customs Revenue.

Besides the making of commercial reports, there is another way, important though indirect, in which our foreign trade is aided by the consuls. In our present organization indeed this function is as strongly emphasized as any branch of the work. It is the protection of the customs revenue, and consequently in contrast with the other service deals with import trade only. Our system of ad valorem duties almost invites the undervaluation of imported goods, resulting in the loss by the government of a part of the revenue due. This kind of fraud is comparatively easy of detection in invoices of raw materials, where the prices current upon the market are easily accessible, and furnish an accurate basis for calculating value. In case of highly manufactured goods, which form by far the larger and more valuable portion of our dutiable imports, the value is very difficult for one not an expert in the trade to determine. Consuls are here at a great disadvantage in determining the value of the goods, and the customs officers of our ports, far from the scene of manufacture, would practically be forced to accept the invoice valuation passed by the consuls. For over seventy-five years there was no adequate means for checking false statements in the value of goods. Individual consuls through personal efforts often did good work in detecting fraud, but no definite method was discovered by which the actual cost price could be approximately determined. In many lines, indeed, this has not been done even yet, but great advance has been made. As an example of the extent of the abuses arising under the old system, Inspector Starring reported in 1869 that he had it on credible authority that the United States was defrauded yearly out of \$9,000,000 in duties on exports of silk from the district of Lyons alone. "The undervaluation

of costly goods is by far the most extensive fraud upon the revenue, and seems to be almost universally practiced.³⁹

A peculiar condition of affairs arose under this method of carrying on the business of the government. In many lines of the most expensive manufactures, such as gloves, laces and woolen goods, our merchants found themselves entirely unable to purchase abroad as the foreign manufacturers preferred to ship to their own branch houses or agents in the United States. By doing this they were enabled to undervalue their goods in the invoices to such an extent that the invoice value and the duty added hardly reached the actual cost price in the foreign market. Evidently this gave them an advantage over the American merchant in the same market, which practically amounted to a monopoly, for the American merchant buying in Europe would there have to pay the actual market price and the bill of lading and invoice received would be made the basis of valuation. Consequently, with the higher invoice value, the American purchaser had to pay a proportionately higher duty, which would make him unable to compete with the prices the foreign agent could offer in America.

How to prevent this abuse long baffled the consuls and the custom house officers, but an original and singularly successful plan was finally evolved by the United States consuls in the lace and textile districts of Switzerland and Germany in 1897.⁴⁰ As an example of the method of procedure adopted, we will describe the measures taken to determine the cost price of all wool henriettas, an article largely imported from the textile regions of Germany, and subject to great undervaluation. The consul at Chemnitz procured samples of the chief varieties of yarns and cloths and sent them to large mercantile houses in Germany and America, with the request that they in turn should send them without revealing their origin to the chief spinners, weavers and finishers of the empire. These manufacturers were asked to submit bids for large orders of the

³⁹ Sen. Ex. Doc., 41st Con., Ses. II, Doc. 27, 1869-1870.

⁴⁰ Notably consuls James T. Dubois at St. Galle, Peters at Planen, Sawter at Glauchau and Monaghan at Chemnitz, though many others deserve credit especially in the *carrying out* of the work.

various classes of goods. True estimates were thus obtained approaching the actual cost of production. The reports sent in were tabulated and made the basis of the customs valuation of the class of goods in question. The immediate result was that the undervaluations were checked and the foreign market was again open to American buyers. The basis for a fair and honest trade was restored. The accuracy of the estimates of cost thus obtained was testified to in the Reichstag by a member from Augsburg—himself a textile expert and an important manufacturer, who stated that the United States consuls had by this means succeeded in getting the most exact cost estimates ever collected in the empire. On account of these estimates, even the *attempts* at undervaluation were greatly diminished in number. In the first twenty-five invoices examined by the expert employed under the consular direction at St. Galle, twenty-two were found to be undervalued all the way from six per cent. to one hundred and eighteen per cent. In the last twenty-five of the last five hundred examined, only six were undervalued and in amounts ranging from six per cent. to twenty per cent.

Consular effort has here not only enabled the government to obtain its just amounts in customs, but has checked the tendency towards dishonesty in invoicing and established fair conditions of trade. In work such as this it is not so much what the consul saves *to-day* which is important, but what he prevents from being stolen *to-morrow*; not the present fraud which is prevented, but the much augmented abuse which would arise if the present fraud were *not* stopped. In guarding the customs revenue, the consul is at the same time insuring the conditions of honest trade.⁴¹ We have now reviewed the

⁴¹That the exaction of the duties justly chargeable is a service to honest commerce was testified in the memorial addressed to the President in regard to the work of Mr. J. T. Dubois by seventeen "of the largest manufacturing and importing firms of St. Galle and the United States" upon the successful establishment of correct invoice valuations in the lace trade of Switzerland. The signers assert that through the actions taken, "the best interests of fair competition and honest trade have been loyally upheld."

character of the reports sent in by the consuls and the aid given by them in the collection of the revenues, it now remains to discuss the actual use made of the commercial reports by American manufacturers and their criticisms of the service.

It would be hard to find a more varied opinion upon any subject than that of our manufacturers on the efficiency of our consular service. The majority, of course, do not concern themselves with foreign trade, but are content with a share in the home market. Further, a large proportion of those actually engaged in foreign trade have never made any effort to avail themselves of the service of the consuls, and ship abroad only indirectly through sales to commission merchants in New York and other ports. In this connection letters were written to representative manufacturing exporters to determine what aid they had received from our consular representatives. In a total of one hundred and two replies received, fifty-seven stated that they had never asked any assistance or received aid from the consular service, either directly or through the State Department. Of these fourteen reported that their trade was entirely in the hands of foreign commission houses, and many that they had never availed themselves of the opportunity to obtain the published reports. When to the large proportion of our business interests with no connection in foreign trade is added over one-half of those in fact trading abroad, it is evident that the proportion of actual trade with which our consuls come in contact is small.

Of the forty-five firms which reported having received aid from the consuls, either directly or through the published reports, thirty-two were fully satisfied with the service rendered; eight reported having received valuable, but partial aid, and five found the reports given valueless. The chief criticisms passed were that the consuls could not give definite information, or that the reports varied greatly in value in the different districts. It should, perhaps, be noted here that too much is often expected of the consular service. The consuls can not be experts on all the various lines of manufacture, and they can not be the active personal agents of the various exporting

firms. Neither can they supply a market nor guarantee the success of a trade adventure. In a word, consuls can not create or maintain a trade; the most they can do is to *facilitate* commerce. Until the *manufacturer* definitely sets out to create and maintain a foreign trade, the consul can only continue to point out possibilities. It can not be too much insisted upon that the aid the consuls may give abroad is dependent entirely upon the determination to expand trade on the part of the manufacturer at home. The large element of individual effort which enters here explains to a great extent the varying degrees to which firms engaged in similar trade have been able to make use of the consular service. In some cases where it would be least expected, in specialized businesses where it would seem an expert agent was most essential, the consuls have been of valuable assistance, while in other instances of a much simpler character, the advantage has been much less. The appreciation of the service and the kind of information which has proven useful are illustrated by the following quotations:

One of the largest meat packing houses in the United States states reports: "We have received during the past few years much valuable information by direct correspondence with our consuls abroad. The names of suitable agents, dealers in our products, the financial standing of individuals, etc., have been furnished, as well as much other information relative to local conditions." An important typewriter company testifies: "We have found that the American consuls have been in every way furthering the cause of exporters." A New York exporting company says: "The consuls . . . have constantly been of valuable assistance to us. We have obtained from them . . . information concerning trade conditions and matters connected therewith which was of immediate value to us. . . . In particular we were able to obtain information relative to tariff changes . . . earlier than published in the newspapers." As to the value of the consular reports a leading company in the manufacture of fire-arms says: "We have obtained knowledge from them that has assisted us greatly in our business"; and from a company

in Cincinnati: "We find that they are able to give us much necessary information in reference to . . . new markets and kinds and classes of goods required in the different countries. They also keep us informed as to details regarding tariffs, methods of packing, sizes and arrangements of packages, etc." An inspection car company writes that after receiving a trial order through the influence of the consul at Moscow, Russia, they "then secured the names of the consuls in other countries and in many instances have been greatly aided in introducing our products in foreign trade. We now have our products in thirty-nine countries and ship almost fifty per cent. of our output to foreign trade. This is not, however, all due to the consular service, as we have in the past and are still making great effort to handle our foreign business from our office."

Illustrations of this character show the aid the service has rendered to firms dealing in widely different lines of goods, when there has been a determination on the part of the home merchant to enter the foreign market. Numerous instances of assistance are quoted in the consular reports, especially in the spread of the sale of American shoes and bicycles. A letter from the office of the Association of German Bicycle Manufacturers states:⁴² "To well applied consular efforts is due the success with which American manufacturers have been enabled to introduce American bicycles in such large quantities into Germany. . . . It is especially well known that the American consul stationed at Frankfort is and has been doing everything in his power to introduce American bicycles into Germany, and to his persistent effort is mainly due the foothold they have obtained." The aid thus rendered is also recognized by the manufacturers themselves, as shown in an acknowledgment from the National Board of Trade of Cycle Manufacturers which reads:⁴³ "Through the Department of State the members of the National Board of Cycle Manufacturers desire to gratefully return thanks to the consular agents who have been instrumental in transmitting information on

⁴² Consular Reports, Vol. 57, p. 293.

⁴³ Consular Reports, Vol. 58, p. 610, September 29, 1898.

the state of the bicycle trade in foreign countries. The bicycle makers of this country have leaned heavily upon the consuls for their supply of knowledge respecting the conditions existing in foreign markets, believing their keen observation and loyalty would be of far greater service than the opinions of prejudiced observers. The accuracy with which the consuls have foreshadowed trade difficulties in European markets and formulated useful methods for securing a foothold in remoter parts have been conspicuous features of their valuable work in behalf of the bicycle industry. The shrewdness of their advice offered for the purpose of expanding our trade has many times operated to our great advantage. They are, in fine, recognized as the most reliable and efficient agents with which the exporters of bicycles and parts are privileged to sustain relations, and there is more than common cordiality expressed in acknowledging the substantial nature of their assistance."

To summarize the character of the commercial work of the consular service, it is evident—

1. That the character of the reports sent has steadily improved, especially since the institution of the monthly reports in 1880. Since that time the reports have become more strictly commercial and have become more exact in statement and subject matter treated.
2. Especially since 1897 the service has accomplished great good in protecting the customs revenue, and assuring the conditions of fair play to all in foreign import trade.
3. That the actual aid to exporters has been limited by
 - (a) The impermanence of the service, involving the loss to the trade of the experience gained in the work, and the lack of interest in an occupation which is of necessity temporary.
 - (b) The indifference of the great majority of our manufacturers to the foreign market, except in times of local depression of prices.
 - (c) The failure of our exporters to take advantage of the assistance offered, and the practice of dealing through brokers instead of directly with the foreign market.

4. That it is shown from conspicuous examples that when the exporter has the determination to enter the foreign market, and is ready to accept the aid of the consuls, great aid can be, and as a rule is, given by these agents.

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CHAPTER V.

EUROPEAN CONSULAR SYSTEMS.

The International Status of Consuls.

The practice of the United States in considering consular officers not to be public representatives in the full sense coincides with the usage of European countries. It is held that not only the special powers originally belonging to consular representatives as the representatives of their nationalities have lapsed in favor of the diplomatic corps,¹ but also that most of the personal privileges and immunities formerly held by consuls no longer exist unless guaranteed by treaty or custom. England is the most conspicuous exponent of this view and has refused to allow foreign consuls to exercise even the functions of notaries public,² holding them to be simple commercial agents with no representative character whatever.³ In this strict interpretation, however, the Foreign Office has hardly been consistent, as a willingness has been shown to claim a public character for English consular representatives abroad while not granting it to foreign representatives in the empire.⁴ The United States has no legal enactments covering this field, but the practice leans toward close restriction of consular rights except where modified by treaty.⁵ Germany also holds strongly

¹ v. Malfatti di Monte Tretto, "Handbuch des Konsularwesens," Wein, 1904. Chapters I and II.

² England also refuses to recognize in law the inviolability of the consular archives. Clercq, *Guide Pratique des Consulats*, Paris, 1898.

³ Dietrich, "De l'Inviolabilité et de l'Exemption de Jurisdiction," Paris, 1896.

⁴ Great Britain has claimed the right to diplomatic immunities, especially in South America, where the consuls "have often availed themselves of these rights even of that of asylum." Clercq, *Guide Pratique des Consulats*, also the *Debates of the Consular Inquest*, 1835, quoted in Clercq.

⁵ *Consular Regulations*, Washington, 1896; also Clercq.

to the same opinion.⁶ In France, theory and practice are absolutely opposed. By numerous decisions the French courts have refused to recognize consuls as public representatives,⁷ while at the same time leading authors claim that⁸ "France has always striven to have recognized for her consuls the diplomatic character."

The French theory is supported by a younger school of writers which founds the claim for representative character for the consuls upon the recent development of their commercial functions. "When they became truly representative of the nation's commerce, they became the representatives of the state, public ministers, though inferior to diplomatic officers."⁹ In practice, however, the immunities of diplomatic officers are not granted to consuls in Christian countries except by Portugal.¹⁰ In Mohammedan and heathen countries, however, consuls are held to be "effective agents of the sovereign."¹¹ The treaty provisions of the various countries have no uniformity either in the extent of the special rights granted nor in the governments from which they may be claimed. German

⁶ Dietrich, "De l'Inviolabilité et de l'Exemption de Jurisdiction," Paris, 1896. Also v. König, "Handbuch des Deutschen Konsularwesens," Berlin, 1902, p. 22, "Germany does not recognize any diplomatic character in consuls in her own country nor ask it in other civilized lands."

⁷ See decree of 14th August, 1829, Cours D'Aix, followed by the subsequent decisions of 1842, 1849, 1868, 1885, 1892. See v. Dietrich, "De l'Inviolabilité et de l'Exemption de Jurisdiction," Paris, 1896; also Decision of the court of Paris, 28th June, 1883, confirmed by the Court of Cassation, 30th June, 1884; also decision of the Court of Paris, 8th January, 1886.

⁸ Clercq, "Guide Pratique des Consulats," Paris, 1898; also Z. Marcas, "L'Organisation Consulaire Française," Paris, 1883, with quotations of other authorities.

⁹ Pinheiro-Ferreira (Portuguese) quoted in Dietrich, "De l'Inviolabilité et de l'Exemption de Jurisdiction"; also Englehart, "Report to the Institute of International Law," *Annuaire de l'Institut de Droit International*, 1888, p. 275 et seq. (Applies only to *consules missi*.)

¹⁰ Dietrich, Diplomatic immunities granted by Portugal to Brazilian consuls during the Revolution. See also Clercq.

¹¹ Pelissie du Rausas, "Le Regime des Capitulations dans l'Empire Ottoman," Paris, 1902.

consuls have less jurisdiction of this sort over their countrymen than the representatives of most other European powers.¹² Russian officers,¹³ especially in the Balkan States, and English¹⁴ officers in the Far East and barbarous countries have the most extensive powers. The most unsettled relations are to be found in the states formerly under Mohammedan rule but now nominally Christian.¹⁵ The basis most generally adopted by European countries is to have the court of the defendant try all cases involving a dispute between nationalities. There is a strong movement among jurists for the extension of mixed courts on a plan similar to that adopted in Egypt.¹⁶ Turkey, however, has consistently opposed this plan¹⁷ and thus far it has not made much progress.

Accompanying the change in duties which has come over the consular service in the last century a widening of rights and privileges has gradually taken place by usage and treaties and

¹² They do not, for example, have the power of banishing objectionable countrymen as do the Oriental consuls of France, Belgium, Russia, England and Italy. See König, p. 10; also *Revue de Droit International*, XIX, 1887, p. 1, and XXIV, 1892, p. 157.

¹³ All the Russian consulates in non-Christian countries are state paid officers. In Persia, and practically in China, a series of courts is maintained in which Russian subjects act as jurors and which provide for final appeal to the IV Department of the Imperial Russian Senate, in cases involving over 600 roubles. A. Heyking, "A Practical Guide for Russian Consuls," London, 1904.

¹⁴ For a study of English rights, see Francis J. Piggott, London, 1892, "Exterritoriality." For French rights, see Clercq. For German, König; for Austrian, di Monte Tretto. General discussions of the subject are further included in the bibliography at the end of the chapter.

¹⁵ G. G. Fleischlen, "De l'Initiative Consulaire en Fait de Tutelle et de Curatelle," Paris, 1891.

¹⁶ Dietrich, "De l'Inviolabilité et de l'Exemption de Jurisdiction," Paris, 1896. Ferand-Giraud, "Les Justices Mixtes," Paris, 1884. Charmes, *Revue des Deux Mondes*, August and September, 1879. Hornung, *L'Annuaire de l'Institute du Droit International*, 1883, p. 235 et seq. U. S. Diplomatic Correspondence, 1877, pp. 614-630. Martens, *Revue de Droit International*, 1882, p. 327.

¹⁷ Ferand-Giraud, "Les Justices Mixtes," Paris, 1884.

consuls may now claim in various instances many rights not guaranteed by the law of nations.¹⁸ The general duties of the consulates in the most important countries of the world now cover approximately the same ground,¹⁹ with the exception of the character of protectors of the customs revenue which as yet is peculiar to the service of the United States.^{19a} The duties to be performed and the location of the offices are often influenced as well by the political and commercial ambitions of the countries concerned as by the actual demands of commerce. This fact is best shown in the location of the English and the German consulates.

Distribution of Consuls.

The important interests of England in the Far East have led to the placing there of the largest and most efficient Oriental consular representation of the world. It includes thirty-three consuls-general and consuls, with salaries of from \$3000 to \$8000, besides a force of lesser officers numbering seventy-five. As at present constituted it is a body of men who enter the Oriental service as a life work and have been long on duty before promotion. The British representation in the near East also is important, including seven permanent higher officers in Persia and thirty in the Turkish dominions. Both services are supported by a large force of vice-consuls, assistants and student-interpreters of English nationality.²⁰

The distribution of the German consulates follows the lead of the imperial commercial ambitions. The desire to foster

¹⁸ Dietrich, "De l'Inviolabilité et de l'Exemption de Jurisdiction," Paris, 1896, p. 166 et seq.

¹⁹ German consuls watch not only over German trade but also over that of Austria, Luxemburg and Switzerland, in case there are no representatives of these States at the various posts. Allgemeine Dienstinstruktion, June 6, 1871, quoted by Zorn, "Die Konsulargesetzgebung des Deutschen Reichs," Berlin, 1901. Also send special reports to the separate German States. König, "Handbuch des Konsularwesens."

^{19a} Brazil and Costa Rica have recently taken steps to introduce similar services.

²⁰ Statistics compiled from the Foreign Office Lists, 1904 and 1905.

German trade in the newer and undeveloped countries is shown in the consular representation in South America, especially Brazil. There are located in that country alone seven consulates with salaries from \$5000 to \$6000, exclusive of local allowances and clerk hire, a representation much stronger than that of any other country. An interesting contrast is made by a view of the German representation in Great Britain and Ireland, which includes but two salaried officers—the consul-general and consul at London,—even the trade interests at Liverpool being cared for by an honorary consul.²¹ The total number of paid German consulates in all the British Empire reaches only seven. The interests of the United States have thus far developed our consular representation most strongly in Europe, especially the manufacturing and commercial centers of England and Germany. In these districts our paid representation is stronger than that of any other nation.²²

Consules Missi and Consules Electi.

The consular officers of all important commercial countries except France are as yet in two classes: *consules missi*, or those sent directly by the state and paid from its funds, and *consules electi*²³ who are residents of the country in which they are appointed and often foreigners to the country they serve. The powers of the first class are similar in all systems, though varied in detail by the different treaties. *Consules electi*, how-

²¹ Compiled from "Verzeichnis der Kaiserlich Deutschen Konsulate," Berlin, 1905. The desire to increase German influence in South America is also shown by the special instructions given to consuls in Brazil and Argentina, soliciting reports on places suitable for settlement by German immigrants. See *Dienstinstruction*, 9th June, 1897, and 10th June, 1898.

²² Compiled from *Statutes at Large*, 1901. The comparisons here considered only *salaried* officials as those paid by fees can be created without cost, and, in the case of consular agents, almost at the discretion of the various consuls.

²³ The representation of some South American countries is composed solely of this class of officials. So with Bolivia, Peru, San Domingo, Costa Rica. See bibliography at end of chapter.

ever, have rights often much restricted by the various states authorizing them to act.²⁴ Where it is possible all nations choose these agents from among the residents of their own nationality and of their own citizenship, but uniformly accept foreigners when such only are available. They are ordinarily paid only by fees or an allowance for office rent, or both,²⁵ and are allowed to engage in business. When they are foreigners, and generally when they are citizens of the nominating state, they have no rights other than those held by persons without similar commissions. This means of representation is used in numerous places where the national interest would not justify keeping a salaried representative.

France has nominally no *consules electi*. The only classes of full consular officers are here, consuls-general, consuls and vice-consuls, all paid directly by the state. They are uniformly prohibited from engaging in business. The three classes have practically the same power except the vice-consuls, who can not delegate their powers, have no civil or criminal jurisdiction and are under the supervision of the consul and diplomatic officers of their respective districts. The French government has, however, found it an advantage to have a supplementary class of officers—consular agents—who are delegated by the consuls to act in places of secondary importance. They act only on the authority of the instituting consul, do not enjoy the consular immunities and have no salary, though they are allowed to keep their notarial fees.²⁶

The Russian organization²⁷ also differs radically from the

²⁴ For the restrictions made by Russia, see Heyking, "A Practical Guide for Russian Consular Officers," London, 1904. Austria: Malfatti di Monte Tretto, "Handbuch des Konsularwesens," Wien, 1904.

²⁵ England has offices of all three kinds. In many cases the "office allowance" is as high as \$750. There are 23 fee-paid consuls in the Valparaiso (Chili) consular district alone with allowances reaching above \$7000. The fee allowances are ordinarily limited, varying from \$25 to \$500; any amount above that sum being turned over to the Government. Foreign Office List 1905.

²⁶ Clercq, "Guide Pratique des Consulats," Paris, 1898. Also Dietrich, "De l'Inviolabilité et de l'Exemption de Jurisdiction," Paris, 1896.

²⁷ Heyking, "A Practical Guide for Russian Consular Officers," London, 1904.

ordinary grading. The *consules missi* are divided into consuls-general, consuls, vice-consuls and consular-agents, all of whom are salaried by the state and do not engage in trade. The *consules electi* are a class composed of consuls, vice-consuls and consular agents who receive no salary and are delegated by the state consuls to whom alone they are responsible, and through whose hands all reports and communications must be sent.

Education and Other Qualifications—Consular Schools.

The unsalaried consuls are in no system required to fulfill any special set of educational attainments; but the case is far different with the consuls of career. In most commercial nations of Europe admission to the latter class is now surrounded by requirements for a certain educational standard and a proficiency in foreign languages.²⁸ In some countries, as France and Austria, admission is dependent upon a long course of training and the service is theoretically closed to all not having had this preliminary education.

Austria²⁹ has gone farthest in providing a system of education for her consular officials. The groundwork of the present system was laid as early as 1823,³⁰ when in the "First Reform of the Consular System" the principle was established "that thereafter the more important consular offices should be filled by truly qualified state citizens, to be put in office after studies in law and political science, and who were also to be possessed of the necessary knowledge of language and of a certain degree of experience and knowledge of the district to which they were to be assigned." The education of the consuls for the East was found to be of so specialized a character that in 1847 a

²⁸ Regulations not elsewhere mentioned are: Maluquer y Salvador, "Derecho Consular Español," Madrid, 1899; "Règlèments Consulaire Royaume de Belgique," Bruxelles, 1899. Russia has no special rules, Heyking.

²⁹ Malfatti di Monte Tretto, "Handbuch des Konsularwesens," Wien, 1904, gives a sketch of the development.

³⁰ As early as 1754, indeed, the government had been interested in building up a school for Oriental languages at Vienna. *Ibid.*

Konsulareleven-Institute was opened by the government with the special object of training young men for the service. This institution, which has undergone many changes in detail, was designed up to 1898 for the education especially of those intending to enter the service in the Orient. Since then, however, it prepares for all branches of the consular service and admits also young men preparing to engage in foreign commerce. The radical revision which the entire constitution of the academy underwent in 1898 placed it upon a thoroughly modern basis. Languages, both Oriental and Occidental, are taught, and commerce, economics and political science are emphasized. The education given is "thoroughly commercial and practical." The teaching staff now includes over thirty professors. Admission to the courses, which are five years in length, is only granted after a very thorough preliminary examination; and tests of the pupil's progress are made at various times during the course. At the end, before definite appointment to one of the subordinate positions, a year's time is spent on probation, partly in work in the chief boards of trade. After a final examination the candidate is eligible to appointment as consular attaché,—the lowest grade of the service. This final examination is open only to those holding a certificate of graduation from the consular academy or from an Austrian or Hungarian university.³¹ The appointments as attaché are made on the basis of ability shown in the examination and the general suitability as attested by the professors and the officers with whom the candidate has come in contact during his period of probation.

The Austrian school is the only real attempt made by any government to furnish a special education for its consular offices. It is too early to judge of its accomplishments on the present basis. It may be said, however, that the training given the candidates for the Oriental offices since the founding of the academy in 1847 is considered by the Austrian government to be "highly successful."³² Advancement after appointment³³

³¹ Order of December 1, 1899.

³² Malfatti di Monte Tretto, "Handbuch des Konsularwesens," Wien, 1904.

³³ Appointment as Attaché is made by the Minister of Foreign Affairs.

as consular attaché is dependent upon the Emperor who acts on the recommendation of the Minister of Foreign Affairs. "It may be regularly counted upon by the consuls, is without party influence, and depends solely on the basis of ability shown."

The so-called French "Consular School" is not, like the Austrian, an institution of learning, but rather a number of students whose education is under the supervision of the government. Such a "school" dates from 1776, but has, of course, undergone many modifications since that time.³⁴ At present the consular pupils, twelve in number, are chosen from among those candidates who have passed the examination for admission to the diplomatic and consular service. In order to be admitted to the examination the candidate must be of French birth, licensed in law, sciences or letters, or have graduated from one of the higher educational institutions. During the first "period" after admission the studies of the student are supervised, the chief of them being history, law and languages. On the completion of these studies another examination admits to the "second period" which is spent abroad in an embassy or consulate-general. Here the candidate does the ordinary professional work of the office and makes commercial reports to the home government. If he proves himself suited to the work he is then eligible to appointment in the lowest grade of the permanent service. Advancement thereafter depends on the record made in office and on a minimum period of service in each grade before promotion is possible.³⁵

The British government does not maintain a school for consuls or supervise their education. The only conditions placed upon applicants for positions are that they shall present recommendations proving their fitness,³⁶ that they shall pass

³⁴ Destroyed by the Revolution, it was later restored and has been modified many times, the last time by the Decree of October 25, 1894.

³⁵ Clercq, "Guide Pratique des Consulats," Paris, 1898.

³⁶ The Order in Council, May 21, 1855, creating the civil service (which includes the consular service) provided that young men who had been "proposed" in a certain manner should be eligible to the examination. By the Order in Council, June 4, 1870, the examinations

the examination for entrance and that they serve during a probation period "till they prove their fitness to be permanently employed."³⁷ Except persons appointed by direct commission from his Majesty, every person who enters the service must fulfill these requirements.³⁸ Judging from the examination given the candidates in 1904, it must be said that the test is not a hard one.³⁹ The requirements may be summed up as a knowledge of English, ability to read and write French, a commercial knowledge of the language of the country to which they go, the principles of British mercantile law and arithmetic. With a minimum so small as this great influence must be allowed to the evidence of qualification submitted. It should be stated that the regulations further provide that "it will be an advantage to candidates to possess one of the following qualifications: (1) To have been called to the bar, (2) to have been enrolled as solicitor, (3) to have taken a university degree, and (4) to have served three years in a commercial house.⁴⁰ It is provided that all who have passed the examination on their first nomination to consulships "will be required, as far as practicable, to attend for at least three months in the Foreign Office in order that they may become acquainted with the forms of business."⁴¹ Except in the case of those applicants who have had experience in a commercial house, this is the only distinctly commercial training required of the newly appointed consul. He may be but very little better prepared for the work he is to do than the average citizen.

Advancement in the service is nominally "strictly by merit,"⁴² and steps have been taken in recent years to make it so in fact.⁴³

were thrown open to all who would pay the fees and prove their fitness. See also Order in Council, August 19, 1871.

³⁷ Consular Service, Order in Council, March 6, 1896.

³⁸ *Ibid.*, and Foreign Office List, 1904, p. 273.

³⁹ Foreign Office List, 1905, p. 376. See page 288 for the Regulations for the examinations revised to 1895 (in force 1904).

⁴⁰ Order in Council, March 6, 1896.

⁴¹ Regulations of 1895 (in force 1904). Foreign Office List, 1905.

⁴² Order in Council, August 15, 1890.

⁴³ Orders in Council, March 6, 1896; November 29, 1898; September 15, 1902.

In the past the privilege of appointing without examination has often been abused and the attractions of the consular service as a career thereby lessened.⁴⁴ This criticism is true, however, only in the service in the West, as the officers in the Far Eastern service have almost without exception passed examinations, and the majority have worked up through the stages of student-interpreter and vice-consul.⁴⁵ The greater part of the irregular appointments in the West also are of men who have seen service before in public positions; and though the practice interferes with the advancement of the rank and file, it does not necessarily mean the appointment of inferior men. The practice of filling the offices in this way, however, is not looked upon as a good one. A Parliamentary Committee, in 1903, recommended that irregular admission should be confined to extraordinary cases, and that the service be recruited thereafter from among younger men, limiting the age of appointment to the years twenty-two to twenty-seven, instead of twenty-five to fifty as before.⁴⁶ This suggestion was followed in 1904 by a regulation providing that the limit of the age of

⁴⁴ See Parliamentary Papers, Miscellaneous, Accounts and Papers 20. Report of the Commission to Inquire into the Constitution of the Consular Service, July 2, 1903, which holds: The Consular Service "offers no definite prospect of promotion to those who enter it, for men who are new to the service may be given appointments over the heads of others who have been there for years before them."

⁴⁵ All the English officers in the China service mentioned in the Foreign Office List, 1904, had passed examinations. The same is true in the service in Japan, Korea, and Siam. Of the 57 Consuls-General, Consuls, and Vice-Consuls in Turkey, 34 had passed examinations and 28 had entered the service as student-interpreters.

In the General Service (West), none of the 46 consuls-general are listed as having been admitted by examination. All but 15, however, had seen service as consuls or vice-consuls, or both. Of the 80 salaried *consuls* in the General Service, 37 were admitted by examination and 56 had served before as vice-consuls. Of the 62 salaried vice-consuls, 37 had passed examinations.

Compiled from the Foreign Office List, 1904.

⁴⁶ Parliamentary Papers, Miscellaneous, Accounts and Papers, 20. Report of the Commission to Inquire into the Constitution of the Consular Service, July 2, 1903.

applicants should be twenty-two to thirty years till January 1, 1907, after which it is to be twenty-two to twenty-seven years.⁴⁷

A characteristic of the English organization is the division of the service into three branches or "careers": One for the Far East, one for the Ottoman dominions, and one for the rest of the world.⁴⁸ The aim is to keep the officials permanently within one of these classes and thus save the government the experience acquired in office which would largely be lost if interchanges were made. The plan is carried out in practice.

The German consular system, unlike those already reviewed, does not constitute a career.⁴⁹ It is assimilated to the civil service and requirements of a special character have to be fulfilled for entrance; but passing the examinations "does not give the candidate any claim for appointment,"⁵⁰ nor does service for a period of years entitle the officer to expect advancement. Nomination as "Berufs konsul" (consul with salary from the government) is possible to those who (1) after passing at least their first examination in law have then spent at least five years in the government service including two years in an under position in the consular service; or (2) to those who have passed a special examination given for Berufs consuls.⁵¹ In practice the appointees are taken from among those candidates who have not only passed their first examination, but also "those prescribed in the various states for judge and the higher administrative offices."⁵² This training, though thorough, is not of the kind which the commercial representative

⁴⁷ Regulation by Lord Lansdowne.

⁴⁸ Foreign Office List, 1905. This organization is more or less closely followed by some other countries, especially Austria. See Malfatti di Monte Tretto.

⁴⁹ König, "Handbuch des Deutschen Konsularwesens," Berlin, 1896, p. 45; also Imperial Constitution, Article 56, in Zorn, "Die Konsulargebung des Deutschen Reichs," Berlin, 1901.

⁵⁰ König, p. 48.

⁵¹ Law of November 8, 1867. See Vosberg-Rekow, "Die Reform des Deutschen Consulatswesens," Berlin, 1897, and Zorn, "Die Konsulargesetzgebung des Deutschen Reichs," Berlin, 1901.

⁵² König, "Handbuch des Deutschen Konsularwesens," Berlin, 1902, p. 46 et seq.

of a country needs at the present time. It does not develop the ability for economic observation and the appointee is but little better off than he would be without his legal education, when he attempts the making of trade reports.⁵³ The German Empire has supported since 1887 a Seminar for Oriental Languages at Berlin somewhat on the plan of the Austrian academy. The selection of consuls has not, however, up to the present time, been made largely from the graduates of the institution, and the consular establishment has remained almost exclusively a legal and not an economic-commercial body.

Consular Salaries and Allowances.

As we have seen, in the most important European countries the foreign commercial service is a life work for those who enter it. This permanence of the consular systems forms one of the most striking contrasts to the practice in the United States. It is needless to say that a service of this class can acquire greater influence in foreign trade circles than one in which the personnel is periodically changed for a set of inexperienced men. Provision for salaries such that the officers may maintain a social standing in the community equal to their position is also made more generously by European nations than by the United States. Besides being permanent positions and carrying with them the possibility of advancement, the European office generally carries a salary much higher than that paid by the United States in a similar post.⁵⁴

⁵³ Vosberg-Rekow, "Die Reform des Deutschen Consulatswesens," Berlin, 1897. Steinman-Bucher "Die Reform des Konsulatswesens," Berlin, 1884.

⁵⁴ The comparison below is drawn from a table compiled from the following sources:

For Germany: König, "Handbuch des Deutschen Consularwesens," Berlin, 1902.

For England: Foreign Office List, 1905.

For France: Berger-Levrault, "Annuaire Diplomatique et Consulaire," Paris, 1898.

For the United States: Statutes at Large, 1901.

Data for Austria are omitted as the "local and personal allowances

By far the best paid service is the English, followed by the German and the French. To the larger actual income and the permanence of his position must be added still other advantages of the European consul. It is important that in European systems the positions carry with them a pension on superannuation, or retirement allowance, which also extends to the family of the officer after his death.⁵⁵

could not be determined, nor the premiums for service." Judging simply from the figures available, the salaries there are *lower* than those paid by the United States, but have the advantage of being permanent and leading to a pension. The table was constructed on the scale of one pound equalling \$5 = 20 marks = 25 francs.

In the European countries considered, there are few independent consular positions with less than a salary equivalent to \$2000. In the United States there are 83 positions, or over 33 per cent. of the entire independent positions, which receive salaries of from \$1000 to \$1500. The number of positions in each country with a salary of \$2000 or over is as follows: Germany, 109; England, 204; France, 126, or, including 87 vice-consulates, 213; the United States, 138. This comparison seems to show the United States in fairly good standing; but a large proportion of these consulates of the United States is at the lowest figure (\$2000), and the disparity in salaries is strongly brought out by comparing the salaries paid at posts where the United States is represented along with one or more of the other countries. There are 61 posts where such conditions are present. In only five instances does the salary of the United States consul equal or exceed that of the lowest salaried similar representative of the other countries. In the other 56 instances the disparity averages over \$1400. (It is in fact even greater, as, in the case of the French and German offices, only the personal salary could be obtained; whereas the allowance for office rent (20 per cent. of the salary) is included in the computation of the salaries of our consuls. The inequality would of course be accentuated still more if the 83 consuls of the United States with salaries of \$1000 to \$1500 were included. It should also be stated that the United States has 77 posts paying \$2000 or over at places where the other countries are not represented by salaried consuls. The other countries were represented in posts where the United States had feed or low salaried offices in 217 cases in all. The table does *not* include "clerk hire" in any case, except where it may be included in the allowance for office rent.

⁵⁵ The amount and manner of the payment of the pensions varies greatly.

Various other advantages are possessed by the consuls of the different foreign systems. The English⁵⁶ consuls have "local allowances," in addition to their salaries, which are intended partly to aid in the maintenance of a position in keeping with the dignity of the office and partly to equalize the salaries in cases where the cost of living is expensive. A similar allowance is granted by Germany,⁵⁷ though the aid is not so great. France,⁵⁸ Spain and Austria too have supplementary

In Austria: After ten years of service in case of retirement for inability, the officer gets 40 per cent. of his income as pension; two per cent. more is added for every year in addition to ten. "After a period of forty years' service (when any officer may be retired), the whole salary goes as pension." Malfatti di Monte Tretto, "Handbuch des Konsularwesens," Wien, 1904, p. 566, Vol. I.

In England: The pension varies according to the length of service—between $\frac{5}{12}$ and $\frac{11}{12}$ of the total salary. The minimum may be claimed after 15 years of service. Superannuation Act. 4 and 5, William IV, c. 24; July 25, 1834. By an order in Council, March 6, 1896, "Every officer appointed to the Consular Service shall be required to retire at the age of 65 on such pension as by the length of his service he is qualified to receive." In 1903, a system of graded salaries was adopted, which is eventually to become the basis of the pension allowances. Foreign Office List, 1905.

In France: The pensions provided range from 6000 francs for consuls-general to 4000 francs for consuls of the second class. Clercq, *Guide pratique des Consulats* and Berger-Leverault, *Annuaire Diplomatique et Consulaire*.

In Germany: Salaried consuls have a right to pension if disabled in mind or body after not less than 10 years' service. In any case, a salary may be claimed after the consul reaches the age of 65. The pension granted after 10 years of service is ten per cent. of the last salary held. It is increased one per cent. for each year's work in addition, up to a limit of three-fourths of the income of the position. Any consul may be retired at any time by the Kaiser on three-fourths pay. See Reichsgesetzblatt for laws of April 21, 1886, S. 80; May 24, 1887, S. 194; March 5, 1888, S. 65. Also Zorn *supra*.

⁵⁶ Foreign Office List, 1905.

⁵⁷ König. The servants also in the German consulates, even down to the janitors and doorkeepers, are paid directly from the Imperial Treasury. König, p. 73.

⁵⁸ For France: Berger-Leverault.

For Austria: Malfatti di Monte Tretto.

For Spain: Maluquer y Salvador.

budgets for similar purposes. France⁵⁹ and Austria again have provisions for the gradual raising of the salaries of officers who have served for a number of years in the same place. The idea is to make the officer less anxious for a transfer on account of an increase in pay and to reward those who, by a study of a special district, come to be more valuable to commerce by their long local experience. That some such measure is needed is shown by the frequent changes which have been in the past such a striking feature of the records of consular officers, especially in France.⁶⁰ Several governments also make an allowance for an outfit upon the first appointment⁶¹ to a post and on transference from one post to another. The expenses of the consul on the way to his post are defrayed by the government, and in some cases even the cost of visits to the home country, to keep in touch with domestic commercial needs.⁶²

The comparison of these facts with the conditions of payment in the United States makes a strong contrast. When to the greater money salary received by the European consul is added the surety of his position, his claim upon a pension, his larger allowance for local expenses, and the various other means by which the salary is in reality increased, it is clear that our officers are much more poorly paid than any similar corps among the chief commercial nations of Europe, and must often work at a great disadvantage on that account.

The management of the fiscal functions of the consular service varies greatly in importance in the different countries. It

⁵⁹ By decree of 1896.

⁶⁰ See Berger-Levrault, Division on "Records of the Consuls," also English Foreign Office List for the same thing there. For criticism see Z. Marcas, "L'Organization Consulaire Francais," Paris, 1883.

⁶¹ England Foreign Office List, 1904, p. 325. Outfit allowance one-ninth to one-third of year's salary. For similar allowance, France: Clercq. Allowance on appointment and special installation allowance of one-fourth year's salary. Also on transference.

Austria: Malfatti di Monte Tretto.

Spain: Maluquer y Salvador.

Germany: König.

⁶² France, Decree of April 26, 1882.

is most important in the United States on account of the dues in connection with invoicing levied by our consuls and in England where the duties in relation to shipping claim chief attention. The English system is further differentiated by a system of accounting which renders the improper appropriation of any fees by the consul very difficult. Any attempt to do so is further punishable by fine.⁶³ The system of accounting is one patterned after the organization of the post office. Stamps are provided corresponding to the various fees due for services, and a suitable quantity issued to each office and charged against it. No consular paper is of value unless it has stamps to the amount of the consular fee upon it. As this removes any possibility of exacting more than the legal fee, the abuse does not exist at all in the English system.

Consular Reports.

The commercial duties of the various consular corps, as outlined in the instructions sent out, are almost the same in all commercial nations. In Belgium the sending of samples to the Government Commercial Museums is emphasized,⁶⁴ and in Austria and Russia the consuls are to give aid in finding out as to the reliability of firms about which merchants make inquiry,⁶⁵—a service discouraged by some other governments;⁶⁶ but aside from similar differences in details, the ground covered is practically identical. The requirements for reports also are very similar. Their number and frequency have been rapidly increased in the last twenty years, and various methods adopted to bring them to the use of the manufacturing world. Supple-

⁶³ Act of July 21, 1891; 54-55 Victoria, c. 36. Punishes consul who takes or asks a fee higher than that prescribed by law, by a fine of "not more than £100."

⁶⁴ "Réglements Consulaires, Royaume de Belgique," Bruxelles, 1899.

⁶⁵ Malfatti di Monte Tretto for Austria. Heyking, "A Practical Guide for Russian Consular Officers," London, 1899.

⁶⁶ France and England. Z. Marcas, Extract from *Nouvelle Revue*, "La Diplomatie, Les Consuls et le Commerce Français." *Nouvelle Revue*, Vol. LI, December 1 and 15, 1889; also for England, "General Instructions," London, 1893.

mentary to the yearly reviews, there are quarterly or monthly publications, or both, and attempts to bring the reports at once to the people interested through a series of immediate publications by the government or through the daily and commercial press.⁶⁷

Commercial Museums and Chambers of Commerce.

Several European countries have adopted, in connection with their consular service, two other means of encouraging foreign

⁶⁷ In Germany: The use of the reports is offered "partly through the *Deutsche Handels Archiv*, partly through the "Report Service of the Imperial Office of the Interior," "Both series appear as needed." König, p. 106. Besides this a private company now publishes a special series of pamphlets to which subscriptions may be had and which are also sold separately in the book stores. They appear in five series each treating a different portion of the world. The most immediate German publications are now the series called "Nachrichten für Handel und Industrie," "definite short bits of information of actual worth taken from the consular reports." They appear as often as needed. (See "Runderlass des Reichskanzlers," February 21, 1900.)

In England: The consular reports are obtainable by subscription at 30 shillings per year and at newsdealers. They are published in separate pamphlets at a penny or two pence each, each pamphlet treating a single subject. Reports covering the business movements of an entire year are also published. See Foreign Office List, 1905.

In Austria: The publication of the consular reports has been given over to a special corps of workers in connection with the Imperial Commercial Museums. Besides the yearly and quarterly reports, there are published in both German and Hungarian, Weekly Reports, "Das Handels-Museum" and a sheet appearing thrice a week, "Osterreich-Ungarische Konsular-Correspondenz," for information of immediate value. Malfatti di Monte Tretto.

In France: Annual, periodic and occasional reports are provided for as well as special subject investigations. "Provision has recently been made to have reports sent every two weeks, which are to be published at once in the papers." Clercq, "Guide Pratique des Consulats," Paris, 1898.

In Russia: There are provided, "annual reports, special immediate reports on customs tariff, removal of buoys and all that may be helpful to Russian commerce." Heyking.

trade: (1) Commercial museums⁶⁸ supported by the government and actively coöperating with the consular service, and (2) official chambers of commerce in foreign lands.

The most conspicuous examples of the successful use of the commercial museum is afforded by Belgium. A museum has been maintained at Brussels for samples of merchandise most in demand in foreign markets, and facilities are provided for direct communication with the consuls on any subject which may interest the manufacturer. The exactness of the information thus available and the detail given in the replies of the consuls to inquiries sent in this way have created for the institution a real position in the commerce of the kingdom.⁶⁹ Austria supports two such museums, one at Buda-Pesth and one at Vienna to which are entrusted the publication of the commercial reports. In the education of the consular pupils, an effort is made to keep them in touch with the institutions with which they are eventually to coöperate. In Germany, special exhibitions of a similar nature have been established in connection with the boards of trade of various manufacturing towns.

The official foreign chamber of commerce has also found favor as a means of encouraging trade. In this development France⁷⁰ led the way. The establishment of national chambers of commerce abroad was actively taken up as a part of the reform of the consular service in 1880, and the venture has proven very successful.⁷¹ There are now over twenty-five such

⁶⁸ See Gaston Cadoux, "Les Attachés Commerciaux et les Consulats," Paris, 1891, for a discussion of the possibilities of the Commercial Museum.

⁶⁹ Vosberg-Rekow, "Reform des Deutschen Consulatswesens," Berlin, 1897, p. 8.

⁷⁰ See Gaston Cadoux, "Les Attachés Commerciaux et les Consulats," Paris, 1891.

⁷¹ Vosberg-Rekow, "Reform des Deutschen Consulatswesens," Berlin, 1897. As early as 1883 they had come to have an influence in the following ports: New Orleans, Lima, Montevideo. See "Export," No. 16, April 17, 1883. A chamber had existed since 1816 in New Orleans. The work of this institution was described by Leroy-Beaulieu as

institutions receiving subventions from the French government amounting to over 100,000 francs (1897). In almost all cases the resident French consul is connected with the chamber in an official capacity.

Antedating the foundation of the French chambers of commerce, though at first mainly political in function, was the Austrian establishment in Constantinople, dating from 1870.⁷² Its activities, however, soon became confined to economic ground and it did such effective work that a subsidy was granted. "All Austrian industry in that region profited by the establishment."⁷³ Later, chambers were established in Alexandria, London⁷⁴ and Paris, the latter of which has been especially active. Italy also has official chambers abroad receiving subventions amounting (1894) to 165,000 *liré*. England has established no official foreign chambers. Her well established position in the commercial world and the strong connections of long established houses abroad, including the branch houses of many firms, have made additional service unnecessary.

Services to Commerce.

It is difficult to form an estimate of the service really rendered to commerce by European consular systems. The literature on the subject too often assumes the character of an arraignment of the system in use in the home country of the writer, to the advantage of any or all those adopted by foreign governments.^{74a} It is generally the opinion of impartial "marvellous," quoted in Vosberg-Rekow. See also Raffalowich in *Economist Francais* quoted by Vosberg-Rekow, "They fill a real need and their continued life and prosperity must be desired."

⁷² Vosberg-Rekow.

⁷³ *Ibid.*

⁷⁴ *Ibid.* On the establishment of the Official London Chamber and its object, see M. Henri Barillot in *Economist Francais*, No. 7. February 17, 1883. Also for its relation to the Consular Service.

^{74a} French view of the United States Consular Service.

Consular Reports, May, 1899, Vol. 60, No. 224, pp. 179-180. From *Revue Diplomatique*.

British View.

Consular Reports, March, 1899, Vol. 59, No. 222, pp. 476-78.

observers, however, that the consular services are performed by conscientious bodies of men whose work is of value to commerce, but whose usefulness is largely limited by their previous training and the defective organization of the services.⁷⁵ The criticisms, aside from those arising from a misconception of what the consular corps can accomplish, are generally the same passed upon our own service. The routine duties are seldom criticized, no complaints are made of exorbitant charges in fees, and the objection to consuls who are in business is less acute because they have no duties requiring the merchants to reveal the prices at which they buy their goods. Their inefficiency, however, especially in the matter of making reports, is complained of again and again.⁷⁶

Consular Reports, May, 1899, Vol. 60, No. 224, pp. 180-81.

German View.

Consular Reports, June, 1898, Vol. 57, No. 213, pp. 293-94.

Consular Reports, Extract from Vosberg-Rekow: Commercial Treaties of 1903.

Consular Reports, February, 1901, Vol. 65, No. 245, pp. 220.

American View.

Consular Reports, February, 1899, Vol. 59, No. 221, pp. 328-29.

⁷⁵Z. Marcas, "La Diplomatie, Les Consulats et le Commerce Français," Paris, 1889.

Z. Marcas, "Report of the French Committee of Foreign Affairs," 1890; "Report of the French Senate Committee," 1884.

Z. Marcas, "De l'Organisation et de la Repartition des Consulats Français," 1897.

"Report of the Committee to Investigate the Constitution of the Consular Service (British)," 1886.

J. Bryce, "Report to the Chambers of Commerce relative to the Consular Service," 1886.

"Report of the Committee to Investigate the Constitution of the Consular Service," Parliamentary Papers Miscellaneous, Accounts and Papers 20, July 2, 1903.

Vosberg-Rekow, "Die Reform des Deutschen Consulatswesens," Berlin, 1897.

Steinmann-Bucher, "Die Reform des Consulatswesens," Berlin, 1884.

⁷⁶"Annuaire de l'Institut de Droit International," 1889-1892, p. 391 et seq.

Z. Marcas, "La Diplomatie, Les Consulats et le Commerce Français," Paris, 1889.

The chief objection to the consular systems at present is to the character of the services rendered in the promotion of trade, especially the character of the commercial reports. It is claimed that they are not definite enough, often irrelevant and tardy.⁷⁷ The reason for these faults, so far as they result from avoidable causes, is said to be the lack of a commercial administration in the home office and to the previous training of the consuls. Only two governments in Europe have at the present time a distinctively commercial control of the management and publication of the consular reports.⁷⁸ In all the rest the consuls are merely instructed to report on the entire field of the commerce and industries of their districts, with the result that the communications "are momentary flashes seldom taken twice in the same direction," and often on subjects which can not benefit commerce. When reports are solicited by the authorities, it is often done without intelligent direction. An instance of our own experience of this

⁷⁷ Gaston Cadoux, "Les Attachés Commerciaux et les Consulats," Paris, 1891.

Emile Lefèvre, "Apropos la Reorganization du Consulat Francais," Vouziers, 1883.

Z. Marcas, "De l'Organization et de la Repartition des Consulats Francais," Paris, 1897.

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Z. Marcas, *Nouvelle Revue*, Vol. LXI, December 1 and 15, 1889.

Vosberg-Rekow, "Die Reform des Deutschen Consulatswesens," Berlin, 1897.

Steinmann-Bucher, "Die Reform des Konsulatwesens," Berlin, 1884. Reports of Parliamentary Committees (British) *supra*.

⁷⁸ The exceptions are Austria, which adopted a commercial administration in 1898 and Belgium, which has had such since 1880. The Belgian reports are uniformly praised throughout Europe. Apparently the reason for the excellence of the reports lies in the administration from home and the practical character of the people, rather than in the training of the officers which has no distinctive advantages over other systems. See Gaston Cadoux, "Les Attachés Commerciaux et les Consulats," Paris, 1891, and Vosberg-Rekow, "Die Reform des Deutschen Consulatswesens," Berlin, 1897. Leroy-Beaulieu, *Economist Francais*, No. 36, September 9, 1882.

sort was the exhaustive publication prepared on kinds of poultry for which requests for reports were sent to even the consulates on the west coast of Africa. Further, the previous training of those making the reports has not been such as to make them of great value. Until recently no country in Europe squarely faced the problem of making the consular service a commercial one, and the personnel of all European consular systems still remains, in the great majority, composed of men who have had no adequate training for the career they are in. They have, as a rule, not only lacked an education on the subject on which they are to report, but they also have had no business training. A short review of the qualifications for entrance will make this clear.

In Germany, the candidates have usually been educated for the bar and have passed the examination for judge. In France, also, the legal side of the education is emphasized, though entrance is not so dependent upon it as in Germany. Economic and commercial education or experience is not a chief feature of the examination, and it is said to have even less stress laid upon it by the examiners than would seem to be the case from the list of requirements.⁷⁹ Further, the probation period spent abroad can give the young officer only a very partial grasp of general commercial needs and developments. In England, the examination, aside from the legal knowledge required, is concerned more with testing the qualifications for the routine work of the office than with the ability for making commercial reports. In Austria, the examinations, which up to 1898 were the only means of judging the qualifications for the general service, were based more on economic-commercial subjects than in the other countries. Here also, however, the management was less strict than the requirements show.⁸⁰

In general, then, European consular services are not bodies of men commercially trained either by education or practical

⁷⁹Gaston Cadoux, "Les Attachés Commerciaux et les Consulats," Paris, 1891.

⁸⁰Vosberg-Rekow and Malfatti di Monte Tretto.

experience. Attempts at keeping the officers in touch with practical affairs are now being made by France and Austria; but the efforts have not been general enough or of sufficient duration to make possible an estimate of the results. France and England, furthermore, have weakened their service oftener than is generally believed in America by the appointment of men who are too old before entrance to get a grasp of commercial affairs, or whose chief qualification has been that they had "powerful friends in government circles."⁸¹ The accomplishments of services formed on the plans outlined have uniformly fallen short of the hopes of commerce. That such should be the case is, indeed, to be expected so long as the attempt is made to make a commercial body out of men lacking commercial training.

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⁸¹ Emile Lefèvre, "Apropos de la Reorganization du Consulat Français." *Report of English Parliamentary Committee, 1903, supra.*

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CHAPTER VI.

SUGGESTIONS FOR THE IMPROVEMENT OF THE AMERICAN CONSULAR SYSTEM.

A study of the European consular systems shows what a consular service should be rather than gives complete models to be followed. There is no consular system planned on a commercial basis which has been in use long enough to prove its efficiency by results. It is clear that in the organization of an efficient service the requirements for entrance should be as far as possible such as can test the ability to understand business conditions and needs. A knowledge of the language of the country to which the consul proceeds is also an essential. Examinations to test merely the scholastic attainments of the candidate are at best only a partial measure. The ability to *use* the training acquired is quite as important as the training itself. The passing of the examination, however, should not be made easy or a matter which can be avoided. It should determine a high minimum of knowledge, below which the candidate must not fall.

The power of appointment without examination must be kept for extraordinary cases requiring special qualifications, but should be restricted to such.¹ The freedom of choice among those who have passed the examinations must be preserved to the appointing authority not only on account of constitutional provisions,² but in order to assure getting the most

¹ See Report of the Committee to Inquire into the Constitution of the Consular Service, July 2, 1903, Parliamentary Papers Miscellaneous, Accounts and Papers 20.

² Consuls are named by the chief of state in all countries but Sweden. There, a concurrence of the college of Stockholm proposes three candidates to the king who then chooses from among them. The consular system is a part of the Department of Foreign Affairs in England, Holland, Belgium, Russia, Germany, Spain and Italy. In Austria it depends upon the Minister of Commerce and in Sweden from various branches of the government, but chiefly the Foreign Office. See the Consular guides of the various countries and Clercq.

suitable candidates. Advancement should be "by merit rather than seigniority, or at least by merit as well as seigniority."³ In both appointment and advancement such a system is open to the abuse of favoritism, but to adopt the alternative closed system would be to invite a greater evil and give reason for the more frequent use of appointment without test of qualification.

2- The service should further be permanent, in order to insure to the government the advantages of the experience acquired by the agents in office and to encourage the officers to look upon the service as a life work. In addition, impartiality in nomination and advancement would be more easily obtained in a permanent service as the vacancies would not recur at stated intervals and the pressure upon the government to disregard the claims of merit would be less insistent.

A disadvantage of a permanent service, unless accompanied by some provision for the ultimate retirement of the officers, is that there would be constantly in office a large number of men grown inefficient on account of age. This problem is solved by European governments by fixing an age at which retirement is compulsory, at least unless delayed from time to time "for the good of the service."⁴ It is true this is provided for in connection with the prevailing system of civil pensions, but the two are not necessarily part of one plan.⁵

3, The provisions of the English and Austrian services, dividing the offices into careers according to the special qualifications demanded in the different portions of the world, also seem essential to secure the best results. The question of the management of the fee charges, the collection of which plays an important part, especially in the duties of our own consuls, needs no radical change and involves but small expense to give the accounts the definiteness they should have. An adoption of a system of stamps similar to those in use by England

³ Report of Committee, to Inquire into the Constitution of the Consular Service, *supra*.

⁴ See English Foreign Office List, 1905.

⁵ In any case the plan would work less hardship than the arbitrary retirement in use in our present organization.

would remove any chance of unauthorized charges for official services. The unofficial notarial fees, if such were to be turned over to the government, could also be included by an extension of the *list* of fees prescribed by the President, and a law preventing any charges for services not specified in the list.⁶ The question of consuls engaged in business is also of importance. The complaints of commerce against these, as we have seen, are based on better ground in the United States than anywhere else. So long as invoicing remains a part of their duties they can not help being irksome to commerce at times. Further, the conditions under which they hold office make consular affairs only incidental to them and from the nature of the case no special qualifications can be required of them. The aid they can give to commerce, especially the reports they make, can not help but be unsatisfactory. The practice of other nations offers two examples of modifying this service. In France, as stated above, there are nominally no such consuls, their place being filled by consular agents charged only with such duties as require no special rights. The other example is Russia, where the titles of consul and vice-consul are retained, but the officers have only the powers of agents. The adoption of neither of these variations would, however, remove the difficulty in our service and it is hard to see how the services of consuls in business can be dispensed with so long as the present duties of invoicing remain.

The aids to commerce in connection with the consular service adopted by European countries, the government consular school, the official commercial museums, and the official chambers of commerce in foreign lands are of less immediate importance to us. The machinery for a business education such as is suited to the consular candidate is supplied by our various universities. The official commercial museums, even if established, would of necessity be of less influence in so large a country as ours than in one such as Belgium, where the exporting or importing merchant can easily see the exhibits and come into contact with the administration.

Two other things are necessary to bring the consular service

⁶This is the practice of Germany. See König.

to its greatest efficiency: (1) Commercial direction and management of the reports on the part of the home government, so that the service may be brought into closer touch with the boards of trade throughout the country,⁷ and (2) a permanent corps for the inspection of the service abroad on the same plan as the present inspection of the post office service. The experience of European governments, as our own, shows both the need and value of adequate supervision.⁸ In practice the only supervision now regularly given our consuls is the auditing of accounts at Washington.

Deal
It is easy to see that to construct a system which shall bring the best talent to the service of the government abroad is a difficult problem. It involves the organization of a working force which shall be permanent, but at the same time flexible and which shall have both a comprehensive grasp of the trend and needs of commerce together with the power of observing local demands and even the minutiae of trade. That education in law and the routine duties of office do not lead to efficient consular service is evidenced by the experience of European nations; and that admission to the service must not be allowed to become a means of paying political debts is no less clearly proven by the history of our own system. The work done by consuls in the past in both Europe and America, when it has

⁷ See Z. Marcas, "L'Organisation Consulaire Francais," Paris, 1885; "De l'Organization et Repartition des Consulats, Francais," Paris, 1897. Vosberg-Rekow, "Die Reform des Deutschen Konsulatswesens," Berlin, 1897. Malfatti di Monte Tretto, "Handbuch des Konsularwesens," Wien, 1904.

⁸ France formerly had such a system which was effective; now supervision is done by the diplomatic agents and is not so successful. See Dietrich and Cadoux. See Report of M. Hanotaux in the *Journal Official* du Dec. 18, 1884, for refusal to return to the older system. Clercq testifies to the efficiency of the former system. Russia provides that state consuls are to inspect the offices in their districts. They are in turn inspected "as often as the ministry of Foreign Affairs thinks necessary . . . by special state employes sent for the purpose." Consular Regulations, Art. 11, quoted in Heyking. For English opinion, see "Report of the Committee to Inquire into the Constitution of the Consular Service," July 2, 1903, *supra*. See also Vosberg-Rekow and Malfatti di Monte Tretto.

had value, has been due, not to any virtue of training or to the superiority of the system of administration, but rather to the practical cast of mind of the individual. As a rule the consul has neither had suitable preparation for his work nor intelligent direction in it. Until recently there has been nowhere any real attempt to recast the service from what is was when protection of the rights of his fellow-countrymen was the chief duty of the consul, even in Christian countries. The essentially commercial character of the consular service is even yet not appreciated.

The organization of our own consular service is most conspicuous by its lack of commercial characteristics. It has none of the qualities which lie at the base of good business management. The benefits of experience are sacrificed at every change of government, especially if the change is also one of party. There is practically no attempt made to choose men with special qualifications for the offices; there is no prospect held out for advancement on account of work done, and there is no adequate inspection of the work in the field. That a reform of such conditions is badly needed, if our consular service is to become as efficient as it should be, is evident from the most casual observation.

It must always be kept in mind, however, that the best of consular services can not *create* trade. The only time that the consuls *can* render aid to commerce is when the home merchants show a determination to enter permanently on the world's markets. No foreign trade can be built up on the surplus of the slack years at home. So long as a large per cent. of the important mercantile and manufacturing companies are content to do their foreign business through commission houses, the very best of consular services can accomplish but little for commerce. That much can be accomplished, even with our present service, when there is a determination to enter foreign trade, is proven by the experience of the American firms who have availed themselves of the consular services in extending their trade abroad. That more could be accomplished with a truly "commercial consular service" is axiomatic.

APPENDIX.

The following Senate Bill was amended and passed in the house with the changes printed in italics.

S. 1345.

[Report No. 2281.]

IN THE HOUSE OF REPRESENTATIVES.

JANUARY 31, 1906.

Referred to the Committee on Foreign Affairs.

MARCH 14, 1906.

Reported with amendments, committed to the Committee of the Whole House on the state of the Union, and ordered to be printed.

[Omit the part struck through and insert the part printed in italics.]

AN ACT

To provide for the reorganization of the consular service of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the consular system of the United States be reorganized in the manner hereinafter provided in this Act.

SEC. 2. That the consuls-general and the consuls of the United States shall hereafter be classified and graded as hereinafter specified, with the salaries of each class herein affixed thereto.

[The rest of Section 2 reclassifies the offices and fixes the salaries for each. Five classes of consulates-general are provided with salaries ranging from \$4,500 to \$12,000. Consulates are divided into 8 classes (Senate bill 10) with salaries from

\$2,000 to \$8,000. *There are no consulates with salaries of less than \$2,000.*]

SEC. 3. That the offices of vice-consuls-general, deputy consuls-general, vice-consuls, and deputy consuls shall be filled by appointment, as heretofore, except that whenever, in his judgment, the good of the service requires it, consuls may be designated by the President without thereby changing their classification to act *for a period not to exceed six months* as vice-consuls-general, deputy consuls-general, vice-consuls, and deputy consuls; and when so acting they shall not be deemed to have vacated their offices as consuls. Consular agents may be appointed, when necessary, as heretofore. The grade of commercial agent is abolished.

[The section following was included in the Senate Bill, but struck out in the House of Representatives.]

SEC. 4. That there shall be five inspectors of consulates, to be designated and commissioned as consuls-general at large, who shall receive an annual salary of five thousand dollars each, and shall be paid their actual and necessary traveling and subsistence expenses while traveling and inspecting under instructions from the Secretary of State. They shall be appointed by the President, with the advice and consent of the Senate, from the members of the consular force possessing the requisite qualifications of experience and ability. They shall make such inspections of consular offices as the Secretary of State shall direct, and shall report to him. Each consular office shall be inspected at least once in every two years. Whenever the President has reason to believe that the business of a consulate or a consulate-general is not being properly conducted and that it is necessary for the public interest, he may authorize any consul-general at large to suspend the consul or consul-general, and administer the office in his stead for a period not exceeding ninety days. In such case the consul-general at large so authorized shall have power to suspend any vice or deputy consular officer or clerk in said office during the period aforesaid. The provisions of law relating to the official bonds of consuls-general, and the provisions of sections

seventeen hundred and thirty-four, seventeen hundred and thirty-five, and seventeen hundred and thirty-six, Revised Statutes of the United States, shall apply to consuls-general at large.

SEC. 5. No person who is not an American citizen shall be appointed hereafter in any consulate-general or consulate to any clerical position the salary of which is one thousand dollars a year or more.

SEC. 6. Sections sixteen hundred and ninety-nine and seventeen hundred of the Revised Statutes of the United States are hereby amended to read as follows:

SEC. 1699. No consul-general, consul, or consular agent receiving a salary of more than one thousand dollars a year shall, while he holds his office, be interested in or transact any business as a merchant, factor, broker, or other trader, or as a clerk or other agent for any such person to, from, or within the port, place, or limits of his jurisdiction, directly or indirectly, either in his own name or in the name or through the agency of any other person; nor shall he practice as a lawyer for compensation or be interested in the fees or compensation of any lawyer; and he shall in his official bond stipulate as a condition thereof not to violate this prohibition.

“SEC. 1700. All consular officers whose respective salaries exceed one thousand dollars a year shall be subject to the prohibition against transacting business, practicing as a lawyer, or being interested in the fees or compensation of any lawyer contained in the preceding section. And the President may extend the prohibition to any consul-general, consul, or consular agent whose salary does not exceed one thousand dollars a year or who may be compensated by fees, and to any vice or deputy consular officer or consular agent, and may require such officer to give a bond not to violate the prohibition.”

SEC. 7. That every consular officer of the United States is hereby required, whenever application is made to him therefor, within the limits of his consulate, to administer to or take from any person any oath, affirmation, affidavit, or deposition, and to perform any other notarial act which any notary public is

required or authorized by law to do within the United States; and for every such notarial act performed he shall charge in each instance the appropriate fee prescribed by the President under section seventeen hundred and forty-five, Revised Statutes.

SEC. 8. That all fees, official or unofficial, received by any officer in the consular service for services rendered in connection with the duties of his office or as a consular officer, including fees for notarial services, and fees for taking depositions, executing commissions or letters rogatory, settling estates, receiving or paying out moneys, caring for or disposing of property, shall be accounted for and paid into the Treasury of the United States, and the sole and only compensation of such officers shall be by salaries fixed by law; but this shall not apply to consular agents, who shall be paid by one half of the fees received in their offices, up to a maximum sum of one thousand dollars in any one year, the other half being accounted for and paid into the Treasury of the United States. And vice-consuls-general, deputy consuls-general, vice-consuls, and deputy consuls, in addition to such compensation as they may be entitled to receive as consuls or clerks, may receive such portion of the salaries of the consul-general or consuls for whom they act as shall be provided by regulation.

SEC. 9. That fees for the consular certification of invoices shall be, and they hereby are, included with the fees for official services for which the President is authorized by section seventeen hundred and forty-five of the Revised Statutes to prescribe rates or tariffs; and sections twenty-eight hundred and fifty-one and seventeen hundred and twenty-one of the Revised Statutes are hereby repealed.

SEC. 10. That every consular officer shall be provided and kept supplied with adhesive official stamps, on which shall be printed the equivalent money value of denominations and to amounts to be determined by the Department of State, and shall account quarterly to the Department of State for the use of such stamps and for such of them as shall remain in his hands.

Whenever a consular officer is required or finds it necessary to perform any consular or notarial act he shall prepare and deliver to the party or parties at whose instance such act is performed a suitable and appropriate document as prescribed in the consular regulations and affix thereto and duly cancel an adhesive stamp or stamps of the denomination or denominations equivalent to the fee prescribed for such consular or notarial act, and no such act shall be legally valid within the jurisdiction of the Government of the United States unless such stamp or stamps is or are affixed and canceled.

Sec. 11. That this Act shall take effect on the thirtieth day of June, nineteen hundred and six.

SEC. 12. That all Acts or parts of Acts inconsistent with this Act are hereby repealed.

Passed the Senate January 30, 1906.

Attest:

CHARLES G. BENNETT,
Secretary,

By H. M. ROSE,
Assistant Secretary.

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